IN THE

Supreme Court of the United States

OCT 5 1974
MICHAEL RODAK, JR., CLERK

October Term, 1974

No. 74-383

RIVER FARMS, INC., a corporation,

Petitioner,

vs.

GUY B. FOUNTAIN, *et al.*,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of Arizona.

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RIVER FARMS, INC., a corporation,

Petitioner,

vs.

GUY B. FOUNTAIN, *et al.*,

Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of Arizona.

Petitioner, River Farms, Inc., a corporation, hereby petitions for a Writ of Certiorari to review the judgments and decisions of the Supreme Court of Arizona rendered in this case on July 9, 1974.

Opinions Below.

The Supreme Court of Arizona denied petitioner's Petition for Review to said court on July 9, 1974. Prior thereto on June 14, 1974, the Court of Appeals of the State of Arizona, Division One, denied petitioner's timely Motion for Rehearing of the decision of the Court of Appeals of Arizona herein rendered on April 11, 1974. Said decision is contained in the report of *River Farms, Inc. v. Fountain* (1974), 21 Ariz. App. 504, 520 P.2d 1181, copy of which is appended thereto as Appendix A. The Arizona Court of Appeals

decision affirmed the decision of the trial court in the same captioned matter in the Superior Court for Mohave County, State of Arizona, No. C-6572, filed and signed March 16, 1972, copy of the Findings of Fact, Conclusions of Law and Judgment are also appended hereto as Appendix B.

Jurisdiction.

The final decision of the Supreme Court of Arizona denying petitioner's Petition for Review was made on July 9, 1974, by which said Arizona Supreme Court denied review of the Opinion and Decision of the Court of Appeals, dated April 11, 1974, and the denial of petitioner's Motion for Rehearing thereof on June 14, 1974. Although petitioner has, by Application to this court, dated, mailed and served on September 24, 1974, requested an extension of time within which to file this Petition for Writ of Certiorari, the absence of response thereto at this time requires the filing of this petition at this time.

The jurisdiction of this court is invoked under 28 U.S.C. 1257(3). In addition, petitioner invites the court's attention to the questions presented herein in accordance with Rule 19 of the rules of this court and, in particular, the following portions thereof:

> "(a) *Where a state court has decided a federal question of substance* not theretofore determined by this court, *or has decided it in a way probably not in accord with applicable decisions of this court.*
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; *or has de-*

cided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision." (Emphasis added).

The trial and appellate court decisions appended hereto as to the latter of which said Court of Appeals denied rehearing and the Supreme Court of Arizona denied review as reflected in the orders of the Court of Appeals and the Supreme Court also appended hereto as Appendices C and D, respectively, are in direct conflict with decisions of this court and constitute a misconstruction and misapplication of federal law, the same being Public Law 89-531, 80 Stat. 340 (August 11, 1966), the Arizona-California Boundary Compact.

Questions Presented.

The questions presented herein arise by virtue of conflicting claims of title to the lands denominated as "Appellees fee land" in the diagram shown at page 2 of the Arizona Court of Appeals' Decision dated April 11, 1974, appended hereto.

Petitioner is the successor in interest by duly recorded continuous and consecutive chain of title to the lands described in said diagram as "Appellants fee land", which title emanated from patent from the

United States of America dated November 5, 1910, and claims title to the "interland" and "Appellees fee land" to the present east bank of the Colorado River as accretions to the land originally patented by virtue of the movement of the Colorado River east bank from a position in which it was surveyed in 1905 to its present position.

Respondents claim title to the lands described as "Appellees fee land" by virtue of deeds describing said lands as being located in San Bernardino County, California, having been originally surveyed and found to be so by virtue of the location of the west bank of the Colorado River in 1883. Respondents' deeds describing said lands as being California lands were recorded in California prior to the commencement of this action but were not recorded in Arizona until after the commencement of this action. Appellees do not claim under chain of title from sovereignty of the United States but only from deeds from their immediate grantors. All of said lands have been on the Arizona side of the Colorado River for many years prior to the commencement of this action and prior to the receipt of deeds describing the same as California lands by respondents.

As reflected in its Findings of Fact, Conclusions of Law and Judgment filed and signed March 16, 1972, Appendix B, the trial court made the following finding:

> "7 . . . (d) In respect to the accretion claims of the parties, undoubtedly the River has to a certain extent moved across or over or around portions of the subject property at one time or another before the river went under the control of the Hoover Dam in the 1930s. All of this movement was more than 35 years ago; the bulk of the accretion evidence concerns movements which oc-

curred approximately 55 years ago. All of the adverse possession claims involve far more recent activities. *Since the court finds that the case is controlled by the adverse possession facts and rules of law involving events of the past 20 years at the most, there could be no utility in continuing speculation or even firm decision as to where the river may have been on this part of the earth's surface or how it got there at some distant time. The court therefore declines to decide the accretion issues . . .*" (Emphasis added).

That court then went on to find that Arizona law was applicable in determining the parties' claims to title by adverse possession, the same being Arizona Revised Statutes, Section 12-525:

> 'Real Property in Adverse Possession and Use Under Duly Recorded Deed with Possessor Paying Taxes: Five year limitation: exception.
>
> A. An action to recover real property from a person in peaceable and adverse possession and cultivating, using or enjoying the property, *and paying taxes* thereon, *and claiming under a deed or deeds duly recorded*, shall be commenced within five years after the cause of action accrues and not afterward." (Emphasis added).

The Court of Appeals, Appendix A, found that respondents' deeds were recorded in San Bernardino County, California, and acknowledged that normally a deed must be filed in the county in which the land is located to qualify as a deed recorded under this statute. It then proceeded to interpret the Arizona-California Boundary Compact, Public Law 89-531, 80 Stat. 340 (August 11, 1966), as modifying this rule as it ap-

plied to lands adjoining the Colorado River. The court then went further and construed Section 6 of the Interstate Compact as allowing anyone holding recorded California deeds to lands *ceded* to Arizona by the Compact to file them in Arizona, to be effective as of the date of the California recording without any finding whatever as to whether the subject lands were *ceded* to Arizona by the Compact. Section 6 of the Compact reads as follows:

> "Sec. 6. Recordation of documents
>
> * * * *As to lands theretofore considered a part of the State of California, which, under the terms of the compact, are within the boundaries of the state of Arizona,* from and after the date of such recording, certified copies of patents, deeds and other instruments affecting the title to the lands which shall have been recorded in the office of the county recorder of the county of California in which the lands were so considered to be located shall be accepted and recorded by the county recorder of the county in Arizona in which the lands are located under the terms of the compact, without charge therefor. Recordings made under the provisions of this section shall have retroactive effect as constructive notice to the date of their original recording in the State of California." (Emphasis added).

The court then proceeded to announce the following:

> "We hold that the recording of a deed bearing a description of land in terms of California townships and ranges, referenced to a California baseline and meridian, entitles one to have his land

'considered' part of California within the meaning of ARS Section 41-522(6). Indeed, in 1883 it was clearly located and 'considered' part of California. The intent of Section 6 is to relieve property owners from the burden of following the frequent jurisdictional changes which occurred in the course of the river and adjusting the filing place of their recorded deeds accordingly. It places them where they would have been, had there been no state jurisdictional boundary involved. In view of the enactment of ARS 41-522(6), we believe the intent of the statute is that ownership of property may change by virtue of changes in the boundaries of the property, but not by virtue of changes in the jurisdictional boundaries."

Said Court of Appeals further construed said Boundary Compact and, in particular, Section 5, thereof, which reads as follows:

"Sec. 5. Preservation of rights

Nothing contained in the provisions of this act, or any operation thereof, shall prejudice the titles, rights or claims of any person, public or private, natural or artificial, to any of the lands herein involved, whether such titles, rights or claims arise or exist upon the basis that the lands affected by the designation of boundary as set forth in the compact and in this act were previously a part of the state of Arizona and have now become a part of the state of California, or were previously a part of the state of California and have now become a part of the state of Arizona, or other-

wise; and no person shall be prejudiced in the water rights which he now has by reason of anything contained in this act."

With respect thereto the Court of Appeals stated:

"We understand this section to mean that no interpretation of the compact can be made which would, in and of itself, deprive anyone of title to land. Our interpretation of Section 6 makes no determination of the relative merits of any of the titles involved. *No one is awarded or denied title by our interpretation of Section 6.* We merely state that great liberality should be allowed in filing of titles which have been clouded by the shifting of the Colorado River over the years." (Emphasis added).

By virtue of the foregoing holdings and decisions of the trial and appellate courts as to which rehearing and review were denied by the Arizona Court of Appeals and the Supreme Court of Arizona, respectively the following questions are presented for review by this court:

1. Was a determination of location of the boundary between the states of Arizona and California prior to enactment of the Arizona-California Compact necessary to support the trial and appellate court decisions and opinions?

2. Are petitioners as successors to grantees by patent from the United States of America entitled to the benefit of application of the doctrine of accretions under state and federal law?

3. Whether federal or state law controls the ownership of land gained or lost by accretion on property conveyed by the United States prior to statehood?

4. Whether the decisions and opinions of the lower courts are in conflict with applicable decisions of this court and, in particular, the following:

United States v. Washington, 294 F.Supp. 830 (9th Circuit 1961), *Cert. denied,* 369 U.S. 817 in 1962);

Hughes v. Washington, 389 U.S. 291 (1967 case);

Nebraska v. Iowa, 143 U.S. 359, 36 L.Ed. 186;

Bonelli Cattle Company, et al. v. Arizona, et al., 414 U.S. 313, 38 L.Ed.2d 143 (Decided December 17, 1973).

5. Whether the decisions of the lower courts are in conflict with or repugnant to a statute of the United States, and, in particular, the Arizona-California Boundary Compact, Public Law 89-531, 80 Stat. 340 (August 11, 1966)?

6. Whether the decisions of the lower courts constitute a taking of property by the state of Arizona without due process of law or just compensation having been made therefor in violation of the 5th and 14th Amendments to the Constitution of the United States and the provisions of Article II, Section 17, Arizona Constitution?

7. Is the Arizona-California Boundary Compact to be construed as vesting persons holding deeds recorded in California, describing lands in California, and upon which taxes were paid in California, with superior title to persons holding lands in Arizona, under federal patent, duly recorded, and consecutive chain of title thereto, together with accretions thereto, and having paid taxes thereon in Arizona in the absence of any finding that said lands were a part of California prior to the enactment of said Compact?

Constitutional Provisions, Statutes and Ordinances Involved.

The Arizona-California Boundary Compact, Public Law 89-531, 80 Stat. 340 (August 11, 1966), complementary legislation 41 Arizona Revised Statutes 522 and California Government Code Sections 175 and 176. Said statute is quoted in pertinent part as follows:

"Article I. Purpose

The boundary between the States of Arizona and California on the Colorado River has become indefinite and uncertain because of meanderings in the main channel of the Colorado River with the result that a state of confusion exists as to the true and correct location of the boundary, and the enforcement and administration of the laws of the two states and of the United States have been rendered difficult.

The purpose of this compact is to fix by reference to stations of longitude and latitude the location of the boundary line between Arizona and California on the Colorado River from the southern boundary of the state of Nevada to the point on the international boundary which is common to the boundaries of Arizona and California and the United Mexican States."

"Sec. 5. Preservation of rights.

Nothing contained in the provisions of this act, or any operation thereof, shall prejudice the titles, rights or claims of any person, public or private, natural or artificial, to any of the lands herein involved, whether such titles, rights or claims arise

or exist upon the basis that the lands affected by the designation of boundary as set forth in the compact and in this act were previously a part of the state of Arizona and have now become a part of the state of California, or were previously a part of the state of California and have now become a part of the state of Arizona, or otherwise; and no person shall be prejudiced in the water rights which he now has by reason of anything contained in this act."

"Sec. 6. Recordation of documents.

Upon approval by the congress of the United States of the compact set forth in section 2 of this act, the secretary of state shall cause to be recorded in each of the offices of the county recorders of Mohave and Yuma counties a certified copy of this act. As to lands theretofore considered a part of the state of California, which, under the terms of the compact, are within the boundaries of the state of Arizona, from and after the date of such recording, certified copies of patents, deeds and other instruments affecting the title to the lands which shall have been recorded in the office of the county recorder of the county of California in which the lands were so considered to be located shall be accepted and recorded by the county recorder of the county in Arizona in which the lands are located under the terms of the compact, without charge therefor. Recordings made under the provisions of this section shall have retroactive effect as constructive notice to the date of their original recording in the state of California. . . ."

The pertinent parts of the 5th and 14th Amendments to the Constitution of the United States are:

> "Amendment V. No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation."
>
> "Amendment XIV. Section 1. . . . no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of . . . property, without due process of law; . . ."

The following is the pertinent part of Article 2, Section 17, Constitution of Arizona:

> "Section 17 . . . no private property shall be taken or damaged for public or private use without just compensation having first been made or paid in to court for the owner . . ."

Arizona Revised Statutes, Section 12-525, *supra,* (in pertinent part).

Statement of Facts.

In 1883 the West or California meander line of the Colorado River was surveyed by the General Land Office, and found to be in the position depicted in the sketch contained in the Opinion of the Court of Appeals of Arizona, Division One, appended hereto and dated April 11, 1974. In 1905, the East bank, or Arizona meander line, was established by the General Land Office Survey and found to be in the approximate position shown in said sketch. By patent dated November 5, 1910, the lands denominated in said sketch as "Appellants fee land", together with other lands, were conveyed to the Atlantic and Pacific Rail-

road Company, predecessor in interest to Santa Fe Pacific Railway Company, in accordance with the official plat of survey. In 1911, said lands were conveyed from Santa Fe Pacific Railroad Company to Cotton Land Company, plaintiffs' immediate predecessor in title. Commencing in 1952, lessees of plaintiffs' predecessor in title, commenced clearing, cultivation, and farming of the area designated appellants fee land, together with the land described in said sketch as the "Interland" and "Appellees fee land", under leases describing the "Interland" and "Appellees fee land" as accretions to "Appellants fee land". In addition since at least 1952, taxes were paid by petitioner and its predecessor upon said "Appellants fee land" to Mohave County, Arizona, together with accretions thereto consisting of some 443 acres. By Grant Deed in 1959, petitioner's predecessor conveyed the "Appellants fee land" to petitioner, and by Quitclaim in 1959 conveyed the accretions thereto to petitioner.

Respondents' claims of title are based upon numerous deeds to them, the earliest of which was in 1947, and latest in 1964, which deeds variously described lands located in Sections 13, 14, 18 and 19, of Township 9 North, Ranges 22 and 23 East, San Bernardino Base and Meridian, generally shown as "Appellees fee land" on the sketch. Said deeds were recorded at various times in California, but never, prior to the filing of this action, in Arizona. Records of tax payments exist showing some tax payments by respondents as to portions of said lands prior to 1966 in San Bernardino County, but not in Mohave County, Arizona. Said lands are presently bounded on the west by the east bank of the Colorado River, shown in its approximate position in the sketch contained in the

Opinion of the Arizona Court of Appeals. While said east or Arizona bank of the Colorado River has been moved slightly in the past 25 years, it has been in essentially that same position since 1932, having moved from the position where it was originally found in 1905 into said approximate position by 1932, by natural processes. Thus, all of said lands have lain *eastward* of the *east* or Arizona bank of the Colorado River at all times prior to the acquisition of deeds thereto describing them as California land by respondents.

In view of the movement of the eastern bank of the Colorado River between 1905 and the present, it is obvious that the western or California bank has also moved as significantly as the river eroded away the lands on the California shore. However, no question is here presented concerning title to lands lying to the west of the present California meander line.

Petitioner claims title to said lands as accretions to lands originally patented to its predecessor by the United States of America in 1910, prior to Arizona statehood and under the laws of the State of Arizona, concerning lands lying within said state. Petitioner contends that under the doctrine and presumption of accretions, said lands always were and still are located within the state of Arizona, since they were formed by the river's movement in a westerly direction. Petitioner also claims that it has satisfied Arizona law relating to the ownership thereof, by its holding of continuous consecutive and duly recorded title thereto and the payment of taxes thereon in Arizona, and the cultivation and use thereof.

Respondents' claims of title to the "Appellees fee land" are based upon deeds describing the same as

California lands, recorded in California, but not in Arizona, until after the filing of this action, and the payment of taxes in California, but not in Arizona until after the filing of this action. In addition, respondents claimed to have used, occupied and cultivated said lands or portions thereof in satisfaction of Arizona laws relating to adverse possession.

The trial hereof was commenced October 8, 1970, and the trial court filed and signed its Findings of Fact, Conclusions of Law and Judgment, a copy of which is appended hereto as Appendix B, on March 16, 1972. By said Judgment, the trial court quieted title to the "Appellees fee land" in favor of respondents and against this petitioner River Farms, Inc. From this decision, this petitioner appealed to the Court of Appeals of Arizona, Division One, and said Court of Appeals, by decision dated April 11, 1974, reported at 21 Arizona Appeals 504, 520 P.2d 1181, Appendix A hereto, affirmed the judgment and decree of the Superior Court. The decisions of the Arizona Court of Appeals and the Supreme Court of said State, in denying the respective Petition for Rehearing and Review filed by petitioner herein, are appended, as Appendices C and D.

The trial court, the Court of Appeals and by denial of review, the Supreme Court of Arizona, in effect, held that

1. It was not necessary to determine whether or by what means the banks and bed of the Colorado River had moved into their present position as shown in the sketch previously referred to.

2. It was not necessary to determine the location of the boundary between the states of Arizona and

California, the same being the middle of the channel of said Colorado River, prior to its designation by way of the Arizona-California Boundary Compact.

3. The principle and presumption of accretions resulting from the movement of navigable waterways, were irrelevant to any issue raised by the case.

4. That although significant movement of the river had taken place since the original surveys of the California and Arizona banks thereof, no issue existed as to its location and thus the location of the boundary prior to that fixed by the Boundary Compact.

5. Respondents as grantees of California lands, were entitled to judgment quieting title in their favor, based upon the application of Arizona law relating to adverse possession by reason of said lands having been ceded to Arizona by the Arizona-California Boundary Compact, or that said lands were theretofor considered a part of California.

6. That the rights of petitioner herein as successor in interest to lands patented to its predecessor by the United States of America, which lands were riparian to the waters of the Colorado River at said time, are not entitled to accretions thereto and are inferior to the rights of respondents, even though petitioner's chain of title was duly recorded in Arizona, the lands utilized and tax payments made in Arizona at all material times prior to enactment of the Compact and respondents recorded no deeds nor paid any taxes in Arizona prior thereto.

Stage of Proceedings at Which Federal Question Was Raised.

Upon completion of the trial and preparation of transcript thereof, the trial court ordered the preparation of proposed Findings of Fact and Conclusions of Law, and Points and Authorities in Support Thereof by each of the parties. Pursuant thereto, petitioner herein filed the same on or about May 5, 1971, and at page 27 of the Memorandum of Points and Authorities in Support of Plaintiff's Proposed Findings of Fact and Conclusions of Law, referred to Section 6 of Arizona Revised Statutes, Section 522, Laws 1963, Chapter 77, which is the Arizona Statute later ratified by the Congress of the United States as Public Law 89-531, 80 Stat. 340, effective August 11, 1966. Said statute in its federal form was further referred to in the Memorandum in Support of Findings of Fact and Conclusions of Law filed on behalf of defendants Farmer, Boyle, Mattis and Puentes, filed herein on or about May 10, 1971, and petitioner's Memorandum in Opposition Thereto filed on or about May 22, 1971. Thereafter, and subsequent to the Findings of Fact and Conclusions of Law and Judgment filed and signed by the trial court on March 16, 1972, the effect of said statute has been thoroughly discussed in Appellant's Opening Brief to the Court of Appeals of Arizona, Appellees' Reply thereto, and Appellant's Reply Brief, together with further discussions in the course of this petitioner's Motion for Rehearing to the Court of Appeals of the State of Arizona, which accompanied petitioner's Petition for Review to the Arizona Supreme Court.

In essence, petitioner has contended throughout that in the absence of the court's finding as to whether the lands which are the subject of this petition, were or

were not accretions to lands granted to petitioner's predecessor by the United States of America, that it is legally impossible and improper for the courts to apply Sections 5 and 6 of the Compact as permitting the satisfaction of the Arizona law of adverse possession by respondents by having recorded deeds to the property describing the same as California lands, in California, and paying taxes thereon in California, and not in Arizona.

Petitioner has further contended that the simple meaning of Section 5 of the Compact is that where title to lands had theretofore been acquired under the principles of accretions, the Compact was intended to effect no change in such title, nor was it intended to grant others any rights therein, and that petitioner's title to said lands should be confirmed to it, in accordance with the presumption of accretion. Petitioner has still further contended that Section 6 of the Compact is intended only to provide a means for the recordation of documents as to lands which were legally considered a part of one state prior to the Compact, but changed in location to the other state by designation of a new boundary in the Compact.

As previously noted, the trial court declined to decide the accretion issues, and the Court of Appeals affirmed, saying, "any determination regarding the vicissitudes of the river or their legal implications, would be *obiter dicta*, since it is not needed for the resolution of the issues". After effectively so saying both courts then seemed to have assumed that the Boundary Compact effected a chance in the location of the boundary (though no such change could have been found, if the lands were formed and the boundary reached its pre-compact location by the process of accretion) and

applied Section 6 of the Compact as enabling respondents to satisfy the requirements of Arizona law, by the recordation of documents in California.

The Arizona courts quieted title to respondents on the grounds of good title or alternatively of adverse possession subsequent to any possible accretion. Respondents' claims thereto and the court's decision were apparently based upon Arizona Revised Statutes 12-525 (*supra*), the legal elements for the satisfaction of which are set forth in *Gila Land and Cattle Company v. Eads*, 23 Ariz. 282, 202 Pac. 549, in which it is stated:

> "All these conditions must concur; that is, there must exist (1) peaceable and adverse possession for five years; (2) cultivation, use and enjoyment for five years; (3) payment of taxes, if any, for five years; and (4) all of these things must be under claim of a deed or deeds duly recorded for the full period of five years."

Petitioners have repeatedly urged that said statute is not satisfied by respondents' recordation of deeds to California land in California and payment of taxes thereon in California and not in Arizona and that no effect or intendment of the Interstate Boundary Compact was designed to produce that result.

Further, as previously noted, the Court of Appeals of Arizona and the Supreme Court of Arizona affirmed such construction by their denial of rehearing and review respectively.

REASONS FOR GRANTING WRIT.

1. *Conflict of Authorities*—As previously noted, the lands here in question lie to the east of the eastern or Arizona meander line of the Colorado River, the mid-channel of which, in both its present and former locations, constitutes the boundary between the states of Arizona and California. The lower courts have acknowledged that between 1905, when said meander line was first surveyed, prior to Arizona statehood, and the present time, said eastern meander line has moved as shown in the sketch referred to in the trial court's Findings of Fact and Conclusions of Law and Judgment.

This court has previously rendered its decision that where a river is a boundary between two states, such boundary moves where the river movement is by accretion. *Nebraska v. Iowa, supra.*

This court has recently affirmed its recognition of the doctrine of accretion in its well-reasoned opinion in *Bonelli Cattle Company, et al. v. State of Arizona,* 414 U.S. 313, 382 L.Ed.2d 143, in which at page 325, this court states:

> "Federal law recognizes the doctrine of *accretion* whereby the 'grantee of land bounded by a body of navigable water acquires a right to any gradual accretions formed along the shore.' *Hughes v. Washington,* 389 U.S. 290, 294 (1968); accord, *Jones v. Johnston,* 59 (18 How.) U.S. 150, 156 (1855). When there is a gradual and imperceptible accumulation of land on a navigable river bank, by way of alluvion or reliction, the

riparian owner is the beneficiary of title to the surfaced land:

> 'It is the established rule that the riparian proprietor of land bounded by a stream, the banks of which are changed by the gradual and imperceptible process of accretion or erosion, continues to hold the stream as his boundary; if his land is increased he is not accountable for the gain, and if it diminished he has no recourse for the loss.' *Philadelphia Co. v. Stimson,* 223 U.S. 605, 624 (1912).

There are a number of interrelated reasons for the application of the doctrine of accretion. First, where lands are bounded by water, it may well be regarded as the expectancy of the riparian owners that they should continue to be so bounded. Second, the quality of being riparian especially to navigable water, may be the land's 'most valuable feature' and is part and parcel of the ownership of the land, itself. *Hughes v. Washington,* 389 U.S., at 294; *Yates v. Milwaukee,* 77 U.S. (10 Wall.) 497, 504 (1870). Riparianness also encompasses the vested right to future alluvion, which is an 'essential attribute of the original property.' *County of St. Clair v. Lovingston,* 90 U.S. (23 Wall.) 46, 68 (1874). By requiring that the upland owner suffer the burden of erosion and by giving him the benefit of accretions, riparianness is maintained. Finally, there is a compensation theory at work. Riparian land is at the mercy of the wanderings of the river. Since a riparian owner is subject to losing land by erosion beyond his control, he should benefit from any addition to his lands by the accretions

thereto which are equally beyond his control. *County of St. Clair v. Lovingston,* 90 U.S. (23 Wall.), at 68 (1874). The effect of the doctrine of accretions is to give the riparian owner a 'fee determinable upon the occupancy of his land by the river and [to afford] the state a title to the riverbed [which is] likewise a qualified fee, determinable in favor of the riparian upon the abandonment of the bed by the river.'

The doctrine of accretions applies to changes in the river course due to artificial as well as natural causes. *County of St. Clair v. Lovingston,* 90 U.S. (23 Wall.), at 64-69 (1874); *United States v. Claridge,* 416 F. 2d 933 (CA9 1969), cert. denied, 397 U.S. 961 (1970) (changes in the Colorado River's course, caused by the construction of Hoover Dam, are accretive). Where accretions to riparian land are caused by conditions created by strangers to the land, the upland owner remains the beneficiary thereof."

In addition, the Federal Statutory Law contained in the Arizona-California Compact, Public Law 89-531, 80 Stat. 340, provides that the sole office of said Compact was to permanently fix the location of the boundary between the two states so that it was no longer subject to movement with the changes in the course of the river, as had been the case prior to its enactment. Said statute in Section 5 thereof, expressly disclaims any prejudice to the titles, rights or claims of any person . . . to any of the lands herein involved, whether such titles, rights or claims arise or exist upon the basis that the lands affected by the designation of

boundary as set forth in the Compact and in this Act were previously a part of the state of Arizona and have now become a part of the state of California, or were previously part of the state of California, and have now become a part of the state of Arizona, or otherwise. *The clear meaning of said statute is that if petitioner herein had acquired title to the lands which are the subject of this appeal as accretions to those originally patented, the Compact was intended to effect no change and its right and title thereto, nor was it intended to grant others any rights therein.*

If, however, the boundary between the states had become fixed by reason of an avulsive change, then, and only then, would said lands have been "previously a part of the state of California, and now have become a part of the state of Arizona", and "theretofore considered a part of the state of California, which, under the terms of the Compact, are within the boundaries of the state of Arizona", thus entitling respondents to the benefit of Section 6 of the Compact with respect to the recordation of documents and tax payments in satisfaction of the Arizona law applied by the lower courts of Arizona.

Since petitioner herein is successor in interest to property conveyed by the United States prior to Arizona statehood, the rights of the parties herein are governed by the federal decisions and statutes and not those of the state of Arizona, *Hughes v. Washington,* 39 U.S. 290, 19 L.Ed.2d 530, 88 S.Ct. 438.

It is thus clear that the decisions of the Arizona courts in denial of review by the Arizona Supreme Court effectively affirming the same, are in direct conflict with the applicable decisions of this court, are a misapplication and misinterpretation of Federal Statutory Law, and are a radical departure from the accepted and usual course of judicial proceedings and the sanction thereof by the Appellate and Supreme Courts of Arizona is such as to call for an exercise of this court's power of supervision. All of these abuses stem from their refusal to determine whether the lands here involved are accretions or not.

If petitioner is the owner of said lands by accretions, to those originally patented, a determination which said state courts refused to make, then their decisions and opinions violate Section 5 of the Compact, in that it deprives petitioner of title to lands presumed to be owned by petitioner, gives and grants them to others, thus constituting a taking of petitioner's property without just compensation and in violation of the 5th and 14th Amendments of the Constitution of the United States and Article 2, Section 17 of the Constitution of the State of Arizona.

Conclusion.

Unless this court takes jurisdiction and grants certiorari, it is submitted that land titles on both sides of the Colorado River will continue to be clouded rather than clarified by the application of the Arizona-California Boundary Compact as announced by the Arizona courts. Despite the fact that significant economic development has occurred along and upon the lands bordering the river on both publicly and privately held lands, many areas exist which are largely or totally un-

inhabited and not subject to cultivation at this time. This is particularly true of lands held for the benefit of the Indian tribes. As a consequence, unless this court clarifies the decisions of the Arizona courts, persons holding recorded deeds describing California property which has long since been washed away by the erosive force of the Colorado River can pay the taxes thereon in California, establishes some form of occupancy of lands on the Arizona side of the present boundary and gain title thereto as against Arizona owners thereof under the doctrine of accretions by application of the Arizona courts' interpretation of the Interstate Boundary Compact.

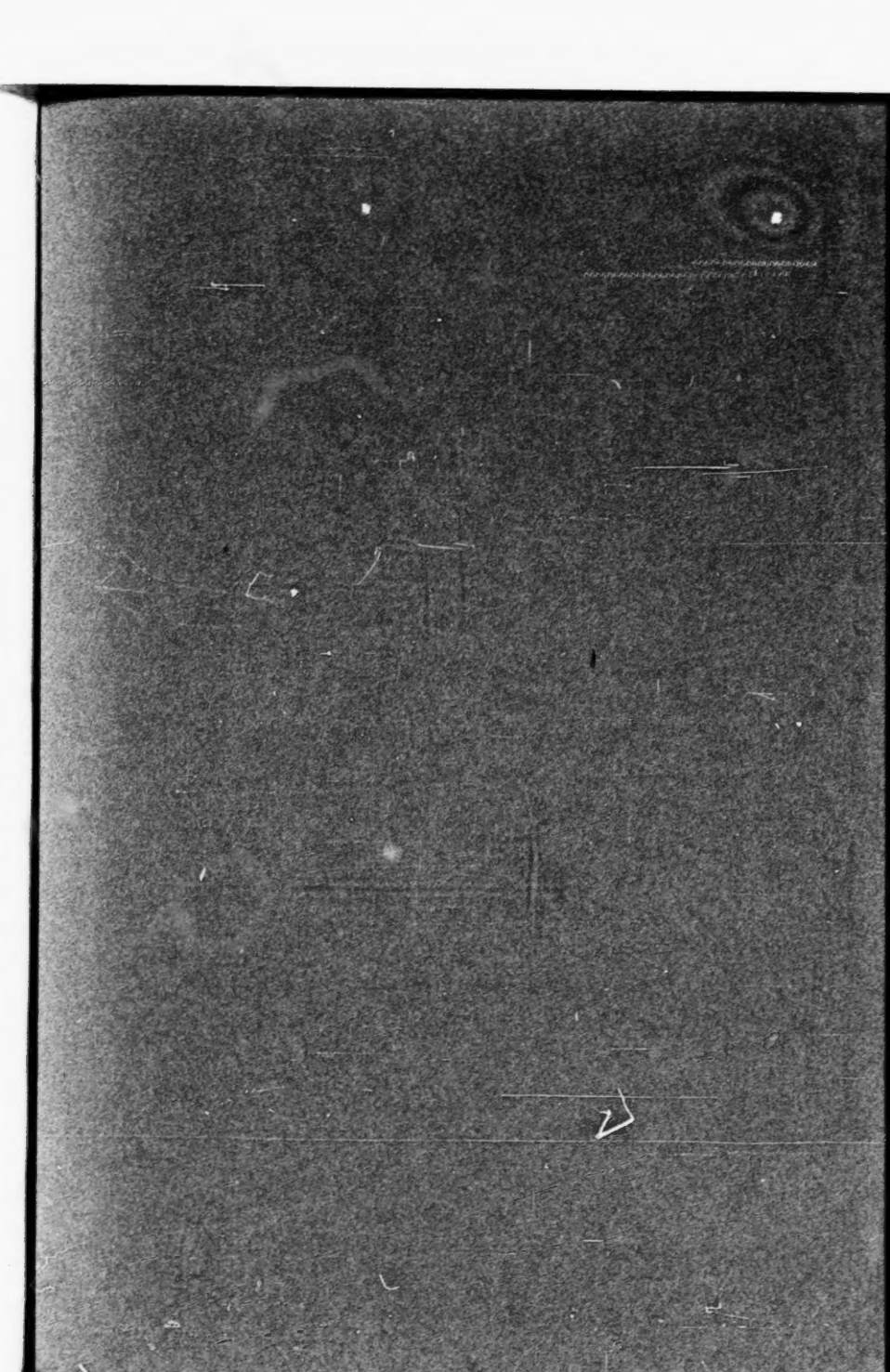
As commented upon in this court's decision in *Bonelli Cattle Company v. State of Arizona, supra,* the courts of Arizona continue to ignore the well established federal and common law doctrines of accretions. All of the decisions of its appellate courts in this case have taken place subsequent to this court's decision in the *Bonelli* case which has so clearly spelled out said law. While that case did not involve an application of the Arizona-California Boundary Compact, the application of the principles enunciated in *Bonelli* and the cases cited therein should have compelled a thoughtful court to consider the same and recognize, rather than affirm, the error initiated in the trial court. It is therefore respectfully submitted that it is incumbent upon this court to announce to the courts of said state the well recognized principles established by this court, and the clear meaning of the applicable federal law. Precedent and common sense require that this court grant this petition so that it may fully review the decisions of the Arizona courts within the framework of the established order of law.

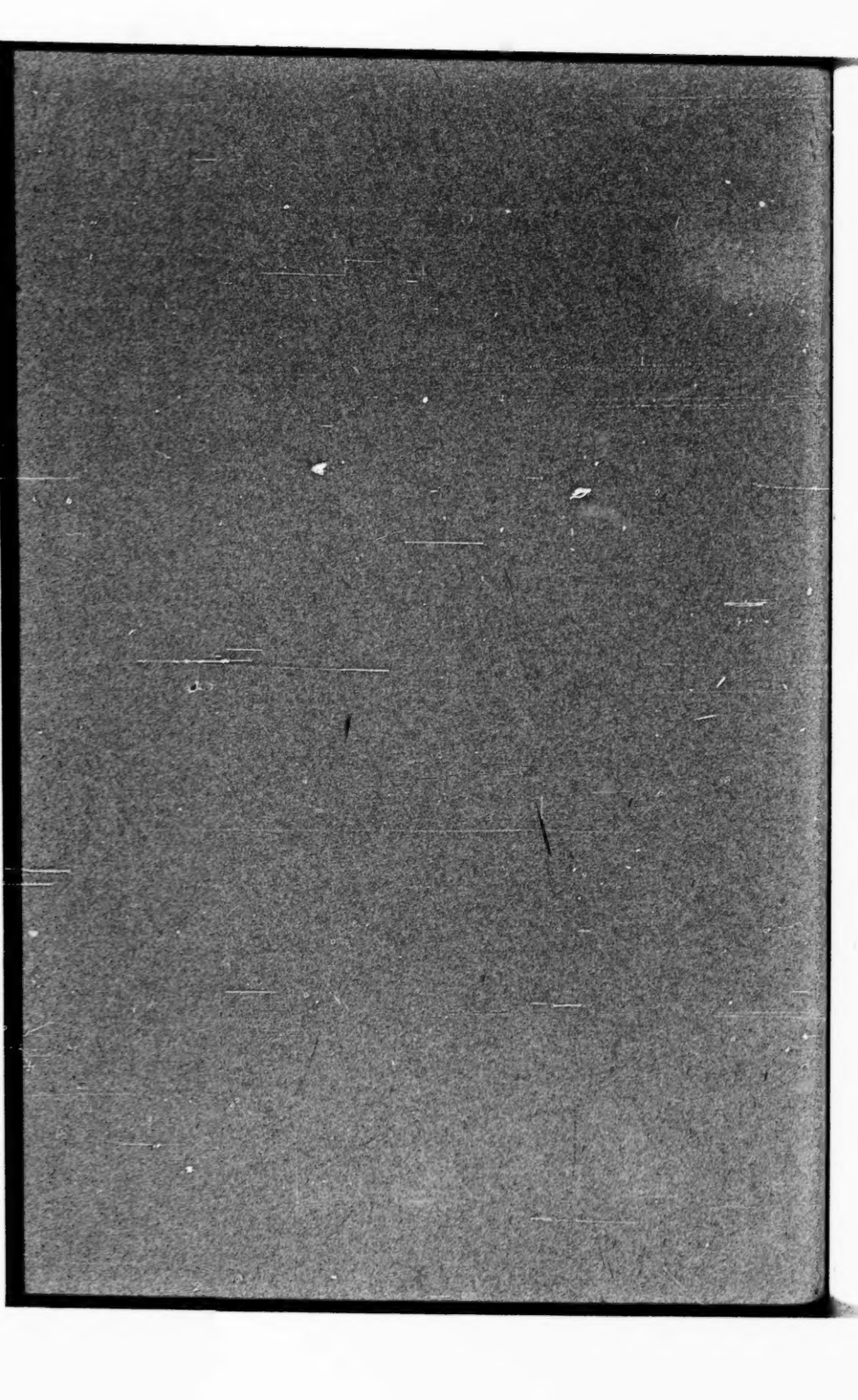
It is therefore respectfully submitted that Writ of Certiorari should be issued and counsel be permitted to file their respective briefs on the questions raised herein.

Respectfully submitted,

BRICE I. BISHOP,
Counsel for Petitioner.

DONALD D. PAUL,
Of Counsel.





APPENDIX A.

Opinion.

In the Court of Appeals, State of Arizona, Division One.

River Farms, Inc., a corporation, Appellant, v. Guy B. Fountain, et al., Appellees.[1] 1 CA-CIV 2009, Department A.

An appeal from the Superior Court for Mohave County Number C-6572, The Honorable Kenneth C. Chatwin, Judge, Affirmed.

Shimmel, Hill, Bishop & Gruender, P.C., Phoenix, By Rouland W. Hill and Woolway, Paul & Magnus, Los Angeles, By Donald D. Paul, Attorneys for Appellant; Lewis & Roca, Phoenix, By John P. Frank and Leek & Oehler, Bullhead City, By Terrence S. Leek, Attorneys for Appellees.

STEVENS, Judge.

The case involves claims and counterclaims in ejectment and to quiet title to Colorado River property to which the opposing parties held conflicting Arizona and California deeds.

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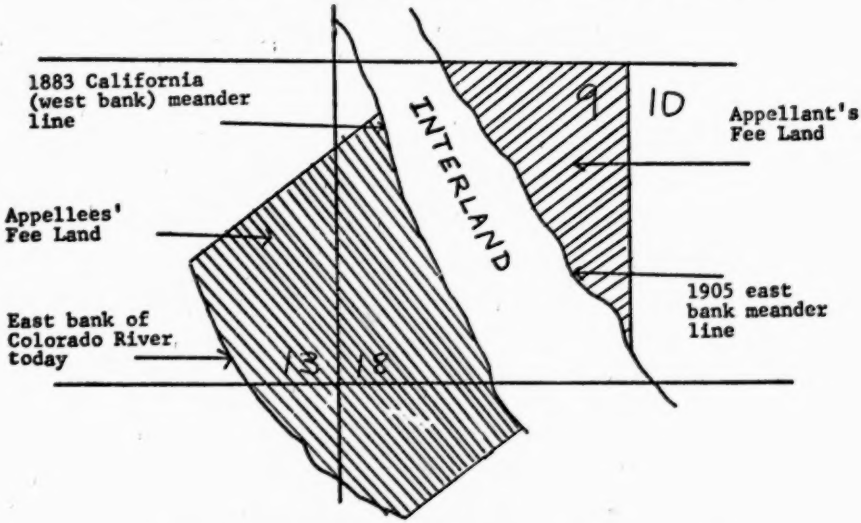
[1]To name all of the appellees in the caption of this opinion would unduly lengthen it. To the end that all parties are set forth, we have listed them as a footnote at the end of this opinion by number and by name as they appear in the judgment entered by the trial court.

The following is a sketch of the land in question.



River Farms, Inc., plaintiffs in the trial court (hereinafter "appellants") claim a fee interest in a portion of Section 9, Township 17 North, Range 22 West, Gila and Salt River Baseline and Meridian. Specifically they claim that portion which lies east of the east meander line of the Colorado River, as such line was established by the Government Land Office survey of 1905. Appellant claims through a deed duly recorded in Mohave County, Arizona from the Cotton Land Company which tracted its claim of title back to original patent. The land so claimed shall hereinafter be referred to as "the appellant's fee land."

The parties defendant (hereinafter "appellees") claim fee interests in portions of Sections 18, 19, 13 and 14, Township 9 North, Range 23 East, San Bernardino Baseline and Meridian. The portions claimed are these areas which lie west of the west meander line as

established by the Government Land Office survey of 1883. All appellees hold deeds duly recorded in San Bernardino County, California. This land shall hereinafter be described as "the appellees' fee land."

The appellant, the appellees and the State of Arizona (not a party to this appeal) claim all or portions of the land between the meander lines as accretions to their fee land. This land between the meander lines shall hereinafter be termed the "interland."

In 1958 the appellant obtained title to appellant's fee land by warranty deed from Cotton Land Company. Appellant also received a quitclaim deed for the lands which had purportedly accreted to the fee lands. The land had been cleared and cultivated by appellant's predecessors, beginning sometime in 1952. Appellant's fee land, the interland, and even appellees' fee land to within 900 feet of the Colorado River were cultivated by appellant. Irrigation problems forced the appellant to discontinue farming in one area and to use another portion for grazing. Appellant's operations in appellees' fee land were largely discontinued by 1961.

In 1961, at the direction of Calnevari Corporation, appellees' predecessor in interest, one Gott erected a fence along the 1883 west meander line. The fence has been in position continuously since 4 January 1962, posted with notices forbidding trespass. Appellant made no use of the land after its discovery of the fence, and its agents and government surveyors were in fact refused permission to enter the property, a fact of which appellant's officers were advised.

Between 4 January 1962, the date of the fence's completion, and 27 March 1967, the date of the filing of this suit, the appellees have put their respective par-

cels west of the fence to their own uses. Appellant paid taxes to Mohave County, Arizona, throughout this five-year period on its fee land and the land allegedly accreted to the fee land. Appellees paid taxes on land described in their deeds to San Bernardino County, California, for the entire five-year period. Appellant brought suit against appellee Gott for trespass in 1961, and the suit was dismissed without prejudice in 1966. Appellees' predecessor in interest sued appellant in 1961 to quiet title in itself, and that suit was dismissed in 1966 without prejudice.

On 27 March 1967 this suit was filed, and after extensive pretrial proceedings, trial was had, commencing 8 October 1970. After a lengthly trial, the court issued findings of fact and conclusions of law. The appellant was awarded the area denominated "appellant's fee land" based on its good title coupled with continuous possession and use. Additionally, the appellant was awarded the area denominated as "the interland" based on a theory of adverse possession. The State of Arizona was awarded a strip of land between the 1952 bank of the Colorado and its present bank, which was uncovered by the channelization by the Bureau of Reclamation. The appellees were awarded the "appellees' fee land." Appellant seeks to overturn that portion of the judgment which awarded lands to the appellees.

The appellant first complains because the trial court did not make findings of fact and conclusions of law regarding shifts in the course of the Colorado River at specific places and times during the past ninety years, and the causes of those shifts. Both the appellant and the appellees produced a great deal of sophisticated evidence regarding this issue. However, the trial court was able to resolve the legal issues raised in the plead-

ings without reference to this body of evidence. Any determination regarding the vicissitudes of the river or their legal implications would be *obiter dicta,* since it is not needed for the resolution of the issues. Appellant claims such findings and conclusions would alter the result, but does not specify in what way.

Although no specific adverse possession statute is mentioned in the conclusions of law, we find the most applicable statute to be A.R.S. §12-525:

> "§12-525. Real property in adverse possession and use under duly recorded deed with possessor paying taxes; five year limitation; exception
>
> "A. An action to recover real property from a person in peaceable and adverse possession, and cultivating, using or enjoying the property, and paying taxes thereon, and claiming under a deed or deeds duly recorded, shall be commenced within five years after the cause of action accrues, and not afterward.
>
> "B. This section shall not apply to anyone in possession of land, who in the absence of this section would claim title through a forged deed, and no one claiming under a forged deed or a deed executed under a forged power of attorney shall be allowed the benefits of this section."

Appellant first contends that the appellees have no duly recorded deeds, within the meaning of this statute, since appellees did not record their California deeds in Arizona until after the filing of this action. The evidence showed that the appellees' deeds were duly recorded in San Bernardino County, California, during the five years they occupied the land described in the deeds. The purpose of requiring a duly recorded deed

is to define the boundaries of the land claimed and to give notice to the true owner of the adverse claim. DAVIS V. HOWE, 213 S.W. 609 (Texas 1919); THOMAS V. SOUTHWESTERN SETTLEMENT LAND DEVELOPMENT COMPANY, 131 S.W.2d 31 (Tex. Civ. App. 1939). The recording of deeds in another jurisdiction may fulfill the first purpose, but is usually not of much assistance as to the second. Normally a deed must be filed in the county in which the land is located to qualify as a duly recorded deed under this statute. [See SLAUGHTER V. HIGHT, 239 S.W. 1018 (Tex. Civ. App. 1922), for an interpretation of Art. 5509, Vernon's Texas Civil Statutes, from which A.R.S. §12-525 was taken.] However, we believe that the Arizona-California Boundary Compact has modified the rule as it applies to lands adjoining the Colorado River, where the jurisdictional line has always been difficult to ascertain.

The Purpose Clause of A.R.S. §41-522 recites a problem existing in that area:

> "Article I. Purpose
>
> "The boundary between the State of Arizona and California on the Colorado River has become indefinite and uncertain because of meanderings in the main channel of the Colorado River with the result that a state of confusion exists as to the true and correct location of the boundary, and the enforcement and administration of the laws of the two states and of the United States have been rendered difficult."

The purpose of the Compact was to establish permanent boundaries between jurisdictions. This remedied future jurisdictional problems but left unanswered the

confusion recited in the Purpose Clause. In an attempt to clarify and regularize real estate titles in the area, the Arizona Legislature enacted §6 of the above-mentioned statute, as part of the Compact with the State of California:

> "Sec. 6. Recordation of documents
>
> "* * * As to lands theretofore considered a part of the state of California, which, under the terms of the compact, are within the boundaries of the state of Arizona, from and after the date of such recording, certified copies of patents, deeds and other instruments affecting the title to the lands which shall have been recorded in the office of the county recorder of the county of California in which the lands were so considered to be located shall be accepted and recorded by the county recorder of the county in Arizona in which the lands are located under the terms of the compact, without charge therefor. Recordings made under the provisions of this section shall have retroactive effect as constructive notice to the date of their original recording in the State of California."

Appellant contends that only those holding deeds to land which was inside California immediately prior to the Compact, and which was ceded to Arizona by the Compact, should be able to file their deeds in Arizona with retroactivity to the date of their California filing, and that because the appellees' fee lands were at all times during the five years of possession within the State of Arizona, the appellees may not avail themselves of the retroactive filing permitted under §6. It appears from the statute itself that significant confusion existed regarding jurisdictional boundaries.

In view of the confused condition of the boundaries of the past ninety years, we find this interpretation unduly restrictive. A more reasonable construction of this section would be to allow anyone holding recorded California deeds to land ceded to Arizona by the Compact to file them in Arizona to be effective as of the date of the California recording. We hold that the recording of a deed bearing a description of land in terms of California townships and ranges, referenced to a California baseline and meridian, entitles one to have his land "considered" part of California within the meaning of A.R.S. §41-522(6). Indeed, in 1883 it was clearly located and "considered" part of California. The intent of §6 is to relieve property owners from the burden of following the frequent jurisdictional changes which occurred in the course of the river and adjusting the filing place of their recorded deeds accordingly. It places them where they would have been, had there been no state jurisdictional boundary involved. As a result of the statute, recordings of deeds would not be rendered invalid by the frequent fluctuations of the river. In view of the enactment of A.R.S. §41-522(6), we believe the intent of the statute is that ownership of property may change by virtue of changes in the boundaries of the property, but not by virtue of changes in the jurisdictional boundaries.

Appellant contends that allowing a retroactive filing prejudices title to its land in violation of §5 of A.R.S. §41-522.

> "Sec. 5. Preservation of rights
>
> "Nothing contained in the provisions of this act, or any operation thereof, shall prejudice the titles, rights or claims of any person, public or private,

natural or artificial, to any of the lands herein involved, whether such titles, rights or claims arise or exist upon the basis that the lands affected by the designation of boundary as set forth in the compact and in this act were previously a part of the state of Arizona and have now become a part of the state of California, or were previously a part of the state of California and have now become a part of the state of Arizona, or otherwise; and no person shall be prejudiced in the water rights which he now has by reason of anything contained in this act."

We understand this section to mean that no interpretation of the Compact can be made which could, in and of itself, deprive anyone of title to land. Our interpretation of §6 makes no determination of the relative merits of any of the titles involved. No one is awarded or denied title by our interpretation of §6. We merely state that great liberality should be allowed in filing of titles which have been clouded by the shifting of the Colorado River over the years.

Once an Arizona recording is allowed under the terms of A.R.S. §41-522(6), for the purposes of A.R.S. §12-525, no evidence of collateral defects in the California deeds may be considered, short of showing the voidness of the deeds on their face. WORK v. UNITED GLOBE MINES, 12 Ariz. 339, 100 Pac. 813 (1909).

The next question raised by the appellant is that the taxes were not properly paid under the provisions of A.R.S. §12-525. It appears clear to us that records of tax payments necessarily underlie the claims of the defendants to the land they are claiming under A.R.S.

§12-525. As such, they are included within the class of documents mentioned in §6 of A.R.S. §41-522 as being entitled to be filed in Arizona, that is, "patents, deeds and other instruments affecting title." As mentioned above, such a filing is retroactive and has the affect of constructive notice as of the date of its California filing.

Even if the record of tax payment is not included within §6 of §41-522 we feel that the paying of taxes in California substantially complies with the requirement of A.R.S. §12-525.

The payment of taxes as an element of adverse possession is common. See 37 California Law Review 477 for a tabulated comparison. A reading of the statutes and cases interpreting them discloses three distinguishable rationales supporting them. One is a "policing theory", which holds that the statute is for the purpose of encouraging the payment of taxes. Another is the "good faith" theory, which views the payment of taxes as a demonstration of honest belief on the part of one claiming under a deed in the strength of his title. Such a position was taken in UNITED STATES v. SCHWALBY, 87 Tex. 604, 30 S.W. 435 (1895), which held that the title to property on which no tax had been assessed could still be obtained by adverse possession under the Texas statute, since tax payment was merely one of the indicia of ownership and confidence of the validity of the title. See WICHITA VALLEY RWY. CO. v. SOMERVILLE., 179 S.W. 671 (Tex. Civ. App. 1915) (dicta). Arizona gives great weight to the

interpretation of the Texas statute, since it is the source of its own. GOLDMAN V. SOTELO, 8 Ariz. 85, 92, 68 Pac. 558 (1902).

A third theory is that the tax payment requirement has as its function the further notice of the title owner that a claim hostile to his own is being established. Many authorities dispute the validity of this rationale, favoring the "good faith" theory stated above. See 132 A.L.R. 216, 218-19 (1941); "Payment of Taxes as a Condition of Title by Adverse Possession" 9 Santa Clara Law Review 244 (1969); See also Comment, 11 Stanford Law Review 720 (1950); Comment, 22 California Law Review 111, 112 (1933). Under a statute similar to Arizona's, Montana has allowed the payment of all the taxes in question at any time during the adverse possession, thereby greatly diminishing the possibility of notice. BARCUS v. GALBREATH, 122 Mont. 537, 207 P.2d 559 (1959). California has held that reimbursement for taxes by the adverse possessor to the landowner satisfies the requirement of payment for taxes under a similar statute. WILLIAMS v. STILLWELL, 217 Cal. 487, 19 P.2d 773 (1933). Utah follows a similar rule. COOPER v. CARTER OIL CO., 7 Utah 2d 9, 316 P.2d 320, 322 (1957). The Nevada Supreme Court notes:

> "If [it is] the purpose of giving notice to the true owner that, per chance, an adverse claimant has appeared upon the scene, his payment of taxes as notice of that fact is entirely insignificant when compared to the circumstances of his open and

notorious possession of the land. ZUBIETA v. TARNER, 76 Nev. 243, 351 P.2d 982, 984 (1960).

We agree with authorities finding the payment of taxes in conjunction with adverse possession to be required primarily as a demonstration of the good faith belief by the adverse possessor in strength of his title, rather than notice to the owner of an adverse claim.

Finally, appellant contends that suits filed during the occupation of the land by the appellees tolled the running of the five-year statute of limitations. The record clearly shows that none of these actions were prosecuted to judgment. The rule in such instances is that the time elapsed during the pendency of suits which are not prosecuted to final judgment is included in computing the period during which the land is adversely possessed. POOLE v. GOODE, 442 S.W.2d 810, 813 (Tex. Civ. App. 1969); GIBBS v. LESTER, 41 S.W.2d 28 (Tex. Civ. App. 1931; YORBA v. ANAHEIM UNION WATER COMPANY, 259 P.2d 2 (Cal. 1953); 3 Am. Jur.2d Adverse Possesssion, §92, p. 174.

Affirmed.

/s/ Henry S. Stevens, Judge
HENRY S. STEVENS, Judge

Concurring:

/s/ Francis J. Donofrio,
FRANCIS J. DONOFRIO,
Presiding Judge, Department A

/s/ Jack L. Ogg,
JACK L. OGG, Judge.

We here list the appellees by number and by name as they appear in the judgment entered by the trial court.

1. Calnevari Corporation
2. Ruby R. Gaut
3. Ruby R. Gaut, a widow, and Donald A. Lewis and Margaret M. Lewis
4. Ruby R. Gaut
5. Catherine L. Sneed
6. Geraldine Whittlesey and Ralph A. Whittlesey
7. Donald A. and Margaret M. Lewis
8. Donald A. and Margaret M. Lewis
9. Doyle Stemen and Marietta Stemen
10. Henry L. Smith and Georgia M. Smith
11. Irma A. Smith and Genevieve Smith
12. Ruth F. McClure
13. Walter G. Briggs and Virginia B. Briggs
14. John D. Vanderslice and Nancy C. Vanderslice
15. George W. Harrison and Charlotte Harrison
16. Donald W. Burson and Hermoine Fae Burson
17. Erma Anne Martin Clark
18. Lawrence A. Andrews and Helen Andrews
19. William B. Tittle
20. Robert E Sinnett and Theresa Sinnett
21. Lena Sullivan and Michael M. Sullivan, Jr.
22. Lena Sullivan and Theresa C. Sullivan Smith
23. Guy B. Fountain and Thelma R. Fountain
24. David R. Kerns and Lois L. Kerns

25. Jack T. Monroe and Gloria A. Monroe
26. Grant A. Lewis
27. Kenneth R. Lucas, Kenneth C. Wetmore and Marguerite L. Wetmore
28. William Claypool III, and his wife, Juanita Inez
29. Thomas G. Harward and Doris J. Bowser
30. Donald S. Johnson and Shirley Joan Johnson
31. Jack M. Hunter
32. Bess W. Brewer, a widow
33. Robert Chesney, Jr.
34. Joe and Margaret A. McIntyre
35. James N. and Marie C. McIntyre
36. Donald G. Beack [sic] and Helen K. Beck
37. Alan L. Boyle and Dorothy M. Boyle
38. Mike H. Puentes and Hazel M. Puentes
39. Georgia Lynn Farmer, Gertrude N. Scott and Ethel Farmer
40. Louis Mattis and Minnie Mattis

APPENDIX B.

Findings of Fact, Conclusions of Law and Judgment.

(Filed 12/15/71)

(Title of Court and Cause)

Findings of Fact

1. This is a lawsuit involving conflicting claims of title for between five and six hundred acres of land lying approximately two miles north of Needles, California, now on the Arizona side of the Colorado River. The subject land is now all in Arizona by virtue of the Arizona-California Boundary Compact, Note, A.R.S. § 41-522 (Supp. 1971), which expressly does not affect land title. With reference to the precise sections or parts thereof which are in dispute, the identification is as follows:

> Sec. 9, T. 17 N., R. 22 W, G. & S.R.B. & M, 14, 18 and 19, T.9N., R.23E, S.B.B. & M., San Mohave County, Arizona. Portions of Secs. 13, Bernardino County, California.

Insofar as it is necessary to give description of precise tracts for purposes of this judgment, they will be appended as exhibits hereto and incorporated by reference herein.

2. The land area in controversy may, for purposes of convenient analysis, be usefully divided into three areas. Plaintiff claims that portion of Sec. 9, T. 17 N., R. 22 W., G & S.R.B. & M., which is to the east of the 1905 meander line of the Colorado River as established by the G.L.O. Survey of that year. Defendants-Counterclaimants (hereafter called defendants) occupy the land west of the 1883 California meander line as shown on the G.L.O. Survey of that year; Ex. G. The 1883

California meander line is appreciably west of the 1905 east bank meander line, so that an area of land lies between them; Ex. X. The defendants have a claim of fee title to the land they occupy and the plaintiff has a claim of fee title to the land in Section 9. Without prejudging the issues of the case, and simply for convenience of reference, these two tracts will hereafter be referred to as plaintiff's fee land and defendants' fee land. The area between the two has variously been called river bottom or interland, and the latter label will be used for purposes of convenience here. The three tracts are depicted, for illustrative purposes only, in the sketch set forth in the next paragraph.

3. (See page 204 hereof for sketch).

4. Plaintiff obtained its title to its fee land from a corporation known as the Cotton Land Company in 1958 (T. 771, Vol. II). The Cotton Land Company held its own title by a chain of title back to the original patent; Ex. 43.

5. The defendants, who hold numerous separate parcels west of the 1883 meander line, have individually acquired their own interests at different times (T. 1056, 1094, Vol. III; T. 1242, 1252, 1272, 1295, 1308, 1324, 1341, 1365, 1454, 1504, Vol. IV). All of them hold under deeds duly recorded in California, and, since the adoption of the interstate compact of 1967 between the two states settling the boundary between the states, all of them also hold under deeds recorded in Arizona, Ex. NN, UU, VV, S, T, U.

6. When the plaintiff acquired its warranty deed for its fee lands in 1958, the Cotton Land Company also gave to the plaintiff a second deed, which was a quitclaim deed for "accretion lands" to Section 9 in

which the fee lands were located (T. 782, Vol. II). That quitclaim deed did not purport to describe by survey measurement the lands which were thus being quitclaimed; Ex. 42 (T. 865, Vol. III).

7. The general position of the parties in this lawsuit is as follows:

a. Plaintiff, owner of the area in Sec. 9 identified in paragraph 2, claims by fee title or by accretion or by adverse possession all of the land in the area which is involved in this case.

b. The defendants have claimed all of the area in the defendants' fee land as identified in paragraphs 2 and 3 by fee title and by adverse possession and have claimed by accretion what may generally be described as the interland and plaintiff's fee land. Since the Court is not deciding the accretion issue, it is unnecessary to be more precise as to this part of the claim.

c. The state of Arizona has been allowed to intervene. It has claimed in two directions. First, it has claimed by accretion some portion of the interland and of plaintiff's fee land; and second, it has claimed a portion of the shoreline along the western edge of the defendants' fee land in that area covered by the Colorado River before channelization activities of the Federal Bureau of Reclamation.

d. In respect to the accretion claims of the parties, undoubtedly the River has to a certain extent moved across or over or around portions of the subject property at one time or another before the River went under the control of the Hoover Dam in the 1930's. All of this movement was more than thirty-five years ago; the bulk of the accretion evidence concerns movements which occurred approximately fifty-five years ago. All of the

adverse possession claims involve far more recent activities. Since the Court finds that the case is controlled by the adverse possession facts and rules of law involving events of the past twenty years at the most, there could be no utility in continuing speculation or even firm decision as to where the River may have been on tbis part of the earth's surface or how it got there at some distant time. The Court therefore declines to decide the accretion issues, holding that as to the State of Arizona, no proof whatsoever has been offered by it as to any accretion claim it may have and that as to the other parties, no ruling is necessary.

Fee Title and Adverse Possession in Plaintiff's Fee Land and Interland

8. Plaintiff's title to the lands originally returned by the River in 1905 as Sec. 9, T. 17 N., R. 22 W., G. & S.R.B. & M., Arizona, is derived under regular and consecutive chain of transfer from patent issued by the Government of the United States of America dated November 5, 1910; plaintiff is the grantee or successor in title of said lands as originally returned as reflected in plaintiff's Exhibit 43, as has been duly recorded in the Office of the County Recorder of Mohave County, Arizona.

9. Commencing in November, 1952, plaintiff's predecessor, Cotton Land Company, leased the property described as Sec. 9, T. 17 N., R. 22 W., G. & S.R.B. & M., described in this litigation as plaintiff's fee land, and immediately thereafter the lessee thereof performed and caused to be performed the clearing, leveling and irrigation of plaintiff's fee land and the interland. Prior to the commencment of clearing operations upon the lands so cleared, the lands in question were covered

with extremely thick brush consisting of mesquite, willows, salt cedar and cottonwood, to approximately the same extent as the lands adjoining the same were observed to be in the course of an inspection made of them during the course of proceedings herein on October 8, 1970. With reference to that land known as the interland, clearing, leveling and irrigation works were carried on by plaintiff and its predecessor from at least 1953 to and including the end of the 1961 crop year, a period of nine years, and farming operations were continuously carried on in and upon all of said lands by the tenants of plaintiff and its predecessor, Cotton Land Company. By virtue thereof, plaintiff and its predecessor in title were in open, continuous, peaceable and adverse possession of all of said lands.

10. Taxes have been paid by the plaintiff and its predecessor in interest both on plaintiff's fee land and the interland since 1953. The defendants' fee land was in fact occupied by predecessors of the plaintiff up to a point about 900 feet from the Colorado River as it then existed in the years 1952 and 1953. This occupation included irrigation. It was, however, not done under color of title.

11. To give the history of the actual use of the land by plaintiff, it is necessary to break it into subdivisions, as depicted in Ex. FF. The tract immediately adjacent to the River was in fact never used at all (T. 978, Vol. III). The next tract, identified as Parcel A in Ex. FF, was tilled between 1953 and 1956, but by 1956 had been abandoned, apparently because of problems of irrigation (T. 944-45, Vol. III). Parcel B, on the same exhibit was tilled from 1956 to 1958 (T. 955, Vol. III), and was used for pasture until 1961 (T. 956, Vol. III). Parcel C, which covers a

portion of the fee land and the interland, was apparently cultivated intermittently until approximately 1959 (T. 957-58, Vol. III); see T. 941-58, Vol. III or, as found in paragraph 9, to 1961.

12. Meanwhile, as the plaintiff withdrew from the land, the land returned to brush (T. 961-62, Vol. III). By the time of its later occupancy by land users of the defendant group, the original brush conditions had been largely though not totally reestablished (T. 961-62, Vol. III). In 1961, members of the defendant group began the installation of a fence along the 1883 meander line (T. 986-87, Vol. III). This fence, placarded with "No Trespassing" signs (T. 1160-61, Vol. III) has been in place substantially without interruption since at least January 4, 1962; (T. 1130, Vol. III), for photographs see T. 1136. Plaintiff has not in fact made any use whatsoever of defendants' fee land since that time (T. 799, Vol. II; T. 852, Vol. III), and knew of the erection of the fence and the accompanying development. On various occasions its agents and representatives were refused entry to the property.

13. Between the time of fencing and the present, various of the defendants have in fact utilized the fee land (T. 1098-1104, 1151, 1162, 1245-62, 1255-58, 1263-67, 1295, 1299, 1310, Vol. III). No useful purpose will be served by tracing the precise history of each individual parcel. Suffice it to say first, all of the land was held under color of title in this tract; Exs. S, I, U, NN, UU, VV. See generally the photographs comprising Ex. E. Second, it has been all behind the fence since January 4, 1962 (T. 1130, Vol. III). Third, much of it has been grazed, built up, and covered by many structures some of them homes, at various points beginning at a time prior to the construc-

tion of the fence and the present. For details of development see T. 1078-1161, 1240-1382, Vol. III.

14. Both sides paid taxes. The defendants paid to California for the land described in their deeds, Ex. A, and the plaintiff paid to Mohave County, Arizona, taxes on something generally indicated as "accretion land", but not specifically related to this property, Exs. 50, 51. See also the tax records of independent defendants, Ex. TT.

15. River Farms brought an action against Evan Gaut, deceased husband of one of the defendants here, for trespassing in 1961 in Mohave County, Arizona. The suit was dismissed without prejudice in 1966; See Ex. DD.

16. In 1961, Calnevari sued River Farms to quiet title to a portion of what has here been called defendants' fee land. On February 28, 1962, River Farms answered and did not file a counterclaim. This case was dismissed without prejudice on April 28, 1966; see Ex. C.

17. *Defendants Georgia Lynn Farmer, Gertrude N. Scott, and Ethel Farmer, hereinafter referred to as "Farmer", obtained titles to the land described as Parcel 5 on March 11, 1958, under duly recorded Grant Deed from Reginald W. Seden, Sr. and Thelma Inez Seden, his wife, said deed being recorded in the San Bernardino County Recorder's Office on April 15, 1958, in Book 4483, Page 242. On September 1, 1961, defendant Ethel Farmer conveyed said lands to defendants Gertrude N. Scott and Georgia Lynn Farm-

*The defendants identified in paragraphs 17, 18, 19 and 20 represented by different counsel than the bulk of the defendants, have requested findings in this form; no distinction is suggested by the fact that this form is not used as to the others.

er, by duly recorded Grant Deed, said deed recorded May 19, 1965, in Book 6394, Page 106, San Bernardino County Recorder's Office. The same deed was rerecorded in Mohave County, Arizona, on April 19, 1967, in Book 236 of Deeds, Pages 255 and 256 (Ex. T).

Defendants Farmer have paid taxes on the subject property to San Bernardino, California, from 1959 to 1967 (Ex. T-1 through T-7).

A box car or outfit car was placed on the Farmer property in 1959 (T. 1275). The outfit car was fit for habitation (T. 1279). The box car or outfit car is still in use for recreational purposes and has been since its placement on the premises (T. 1277). The subject property was considered by its owner to be located in the State of California (T. 1288).

18. Defendants Puentes obtained title to land described as Parcel 49 by duly recorded Grant Deed from David R. Kerns and Lois L. Kerns, husband and wife, dated April 9, 1965, and recorded in the San Bernardino County Recorder's Office on September 17, 1965, in Book 6475, Page 957, of the official records of San Bernardino County. Such deed was subsequently rerecorded on March 28, 1967, in the Mohave County Recorder's Office in Book 234 of Deeds, Pages 500 and 501 (Ex. U). Defendants' Puentes predecessors in interest, who are also named defendants in this cause, obtained title to the subject property on January 14, 1963, by deed recorded in Book 5840, San Bernardino County Recorder's Office (Ex. NN).

19. Defendants Mattis obtained the property designated as Parcel 21, along with other parties, on or about July 15, 1947, by Tax Deed from S. G. Batchelor,

Tax Collector of San Bernardino County, California (Ex. F). Subsequently on February 19, 1964, the original property was partitioned and defendants Mattis owned in their own right, the south half of the original purchase, which has been designated Parcel 21 (Ex. F). Said deed was rerecorded in the Mohave County Recorder's Office on June 29, 1967, in Book 240 of Deeds, Pages 484 and 485. Defendants Mattis have paid taxes on the subject property from the time of purchase until 1967 to San Bernardino County. A fence was constructed on the east side of defendants' Mattis property in 1961 (T. 986-87, Vol. III).

20. Dorothy M. Boyle, formerly known as Dorothy M. Williams, is the widow of Guinn "Big Boy" Williams, who obtained Parcel 34 from B. B. Cooper in approximately 1954 (T. 1584, Vol. IV). The property was distributed to Dorothy Boyle pursuant to Decree of Distribution of Mr. Williams' estate on or about June 2, 1962. Said Decree was recorded in both San Bernardino and Mohave Counties (Ex. OO). Dorothy Boyle is the wife of Allen Boyle (T. 1506). Defendants Boyle have paid taxes on the property described as Parcel 34 from 1961 through 1967 (Ex. XX). The subject property was fenced around 1951 (T. 1505, Vol. IV). The fence remained until the River was rechannelized in approximately 1961 with possibly some fence remaining today (T. 1516). Signs were placed around the property relating to "No Hunting" and "No Trespassing" messages (T. 1506, Vol. IV). During the early 1950's wild horses were kept fenced on the property (T. 1505, Vol. IV).

Conclusions of Law

21. The application of the law either of California or Arizona requires the identical result based on the evidence presented.

22. Title to that portion of the land referred to herein as plaintiff's fee land is entitled to be quieted in the plaintiff on the grounds of good title coupled with continuous possession and use subsequent to any possible accretion.

23. Title to that portion of the land referred to herein as the interland is entitled to be quieted in the plaintiff on the grounds of adverse possession.

24. Title to that portion of the land referred to herein as defendants' fee land is entitled to be quieted in the defendants on the grounds of good title or alternatively of adverse possession subsequent to any possible accretion with exception only as set forth in the following paragraph.

25. Title to that portion of the land between the edge of the Colorado River as shown by the B.L.M. Map of 1952, Ex. 18, and the present bank of the River which was uncovered by the channelization of the Colorado River by the Bureau of Reclamation is to be quieted in the State of Arizona in accordance with the principles announced in the Arizona Supreme Court decision in the case of *State of Arizona, State Land Department, et al. v. Bonelli Cattle Co.*, No. 10030-PR 6, Oct. 4, 1971.

Judgment

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the following named and numbered defendants:

1. Calnevari Corporation
2. Ruby R. Gaut
3. Ruby R. Gaut, a widow, and Donald A. Lewis and Margaret M. Lewis
4. Ruby R. Gaut
5. Catherine L. Sneed
6. Geraldine Whittlesey and Ralph A. Whittlesey
7. Donald A. and Margaret M. Lewis
8. Donald A. and Margaret M. Lewis
9. Doyle Stemen and Marietta Stemen
10. Henry L. Smith and Georgia M. Smith
11. Irma A. Smith and Genevieve Smith
12. Ruth F. McClure
13. Walter G. Briggs and Virginia B. Briggs
14. John D. Vanderslice and Nancy C. Vanderslice
15. George W. Harrison and Charlotte Harrison
16. Donald W. Burson and Hermoine Fae Burson
17. Erma Anne Martin Clark
18. Lawrence A. Andrews and Helen Andrews
19. William B. Tittle
20. Robert F. Sinnett and Theresa Sinnett
21. Lena Sullivan and Michael M. Sullivan, Jr.
22. Lena Sullivan and Theresa C. Sullivan Smith
23. Guy B. Fountain and Thelma R. Fountain

24. David R. Kerns and Lois L. Kerns
25. Jack T. Monroe and Gloria A. Monroe
26. Grant A. Lewis
27. Kenneth R. Lucas, Kenneth C. Wetmore and Marguerite L. Wetmore
28. William Claypool III, and his wife, Juanita Inez
29. Thomas G. Harward and Doris J. Bowser
30. Donald S. Johnson and Shirley Joan Johnson
31. Jack M. Hunter
32. Bess W. Brewer, a widow
33. Robert Chesney, Jr.
34. Joe and Margaret A. McIntyre
35. James N. and Marie C. McIntyre
36. Donald G. Beck and Helen K. Beck
37. Alan L. Boyle and Dorothy M. Boyle
38. Mike H. Puentes and Hazel M. Puentes
39. Georgia Lynn Farmer, Gertrude N. Scott and Ethel Farmer
40. Louis Mattis and Minnie Mattis

have clear and free fee title to those parcels of land of the same number described in Exhibits 1 through 40 attached to this Judgment and incorporated by reference in it except as modified by paragraph 3.

2. That plaintiff has title to the disputed land lying east of the position of the bank of the Colorado River in 1883 as shown by the 1883 G.L.O. Survey as described in Exhibit 41.

3. That fee title to the portion of the land between the present and east bank of the Colorado River and the east bank of that River prior to channelization as shown by the B.L.M. Map of 1952 is in the State of

Arizona. The disposition of this property shall be the subject of a supplemental Judgment.

4. That there is no just reason for delay and immediate entry of this judgment is hereby directed as to all but paragraph 3 of this Judgment.

Done in Open Court this .... day of ....., 1972.

JUDGE OF THE SUPERIOR COURT

(Copy to all counsel and parties in propria persona.)
(lodged 2/4/72)
(Filed 3/16/72)

Exhibit 1

Calnevari Corporation

That part of Government Lot 1, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 659.43 feet, from the Northwest corner of Section 18, Township 9 North, Range 23 East, thence East a distance of 951.34 feet; thence N 18°00′ W, a distance of 693.35 feet; thence West, a distance of 732.60 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 659.43 feet to the point of beginning, more particularly described on that certain Survey filed September 12, 1966 at Fee Number 13297 in Mohave County, identified as the Calnevari Corporation Parcel. Located now in Mohave County, Arizona, recorded in Book 224 of Deeds, Pages 241-242, Mohave County, Arizona Recorders offices at Kingman, Arizona.

Arizona Title and Trust Company of Mohave

Exhibit 2

Ruby R. Gaut

That part of Government Lot 3, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 3626.58 feet from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence East, a distance of 1406.87 feet; thence North 4°45′

West a distance of 17.56 feet; thence North 12°45′ West a distance of 319.22 feet; thence West, a distance of 1332.74 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 328.86 feet to the point of beginning, more particularly described on that certain Survey filed September 12, 1966 at Fee No. 13297, Mohave County, identified as the Ruby R. Gaut Parcel. Located now in Mohave County, Arizona, recorded in Book 228 of Deeds, pages 342-343, Mohave County Recorders Office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave

Exhibit 3

Ruby R. Gaut, a widow, and
Donald A. Lewis and Margaret M. Lewis

Parcel No. 1

That portion of the North half (N½) of the Southwest quarter (SW¼) of the Southeast quarter (SE¼) of Section 13, Township 9 North, Range 22 East, San Bernardino Meridian, according to the official plat thereof, described as follows: Beginning at a point on the North line of said North half (N½); that bears North 89°58′25″ East 720.00 feet from the Northwest corner of said North half (N½); thence South 42°04′45″ East 889.39 feet to the Southeast corner of said North ½; thence North 0°21′07″ East, along the East line of said North half (N½), 660.41 feet to the Northeast corner of said North half (N½); thence South 89°58′25″ West, along said North line, 600.09 feet to the point of beginning. All of said described parcel lying east of the west bank of the Colorado River.

Parcel No. 2

The North ¾ of the Southeast ¼ of the Southeast ¼ of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Government Survey. Excepting therefrom the Easterly 990 feet thereof. Located now in Mohave County, Arizona, recorded in Book 309 of Deeds, page 368 Mohave County, Recorders office at Kingman, Arizona. Identified as the Ruby R. Gaut, a widow and Donald A. Lewis and Margaret M. Lewis, husband and wife, joint tenants, Parcel.

Arizona Title and Trust Company of Mohave.

Exhibit 4

Ruby R. Gaut

The North half (N½) of the South half (S½) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of Section 13, Township 9 North, Range 22 East of the San Bernardino Base and Meridian, San Bernardino, California. Located now in Mohave County, Arizona, recorded in Book 228 of Deeds, page 244, Mohave County Recorders Office in Kingman, Arizona, identified as the Ruby R. Gaut Parcel.

Arizona Title and Trust Company of Mohave.

Exhibit 5

Catherine L. Sneed

That part of Government Lot 2, Section 18, Township 9 North, Range 23 East, of the San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point of the West line of said Section 18, South 2637.72 feet, from the Northwest corner of

Section 18, Township 9 North, Range 23 East; thence East, a distance of 1178.93 feet; thence North 12°45′ West, a distance of 338.34 feet; thence West a distance of 1102.03 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 330.00 feet to the point of beginning, more particularly described on that certain Survey filed September 12, 1966 at Fee No. 13297, Mohave County, identified as the Catherine L. Sneed parcel. Located now in Mohave County, Arizona, recorded in Book 220 of Deeds, page 106, Mohave County Recorders Office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 6

Geraldine Whittlesey and
Ralph A. Whittlesey

That part of Government Lot 2, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 2298.86 feet, from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence East, a distance of 1102.03 feet; thence North 12°45′ West, a distance of 5.57 feet; thence North 9°00′ West, a distance of 327.45 feet; thence West, a distance of 1047.36 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 328.86 feet to the point of beginning, more particularly described on that certain Survey filed September 12, 1966 at Fee No. 13297, Mohave County, identified as the Geraldine Whittlesey and Ralph A. Whittlesey Parcel. Located now in Mohave County, Arizona,

recorded in Book 221 of Deeds, page 62, Mohave County Recorders office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 7

Donald A. and Margaret M. Lewis

That part of Government Lot 2, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 1978.86 feet from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence East a distance of 1047.36 feet; thence North 9°00′ West, a distance of 101.55 feet; thence North 1°15′ East, a distance of 229.75 feet; thence West a distance of 1034.25 feet; thence South 0°20′44″ West, along the West line of said Section 18, a distance of 330.00 feet to the point of beginning, more particularly described on that certain Survey filed September 12, 1966 at Fee No. 1 3297, Mohave County, identified as the Donald A. and Margaret M. Lewis Parcel. Located now in Mohave County, Arizona, recorded in Book 228 of Deeds, page 352-353, Mohave County Recorders Office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 8

Donald A. and Margaret M. Lewis

The South half (S½) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) of the Northeast quarter (NE¼) and the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range

22 East, San Bernardino Base and Meridian, San Bernardino County, California. Located now in Mohave County, Arizona, recorded in Book 228 of Deeds, page 354. Identified as the Donald A. Lewis and Margaret M. Lewis, his wife, as joint tenants, Parcel. Mohave County Recorders office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 9

Doyle Stemen and Marietta Stemen

The North one half (N½) of Government Lot 4 and the Southeast quarter (SE¼) of Government Lot 4 of Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, according to Government Survey. Located now in Mohave County, Arizona, recorded in Book 240 of Deeds, page 209 Mohave County Recorders Office at Kingman, Arizona. Identified as Doyle Stemen and Marietta Stemen, joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 10

Henry L. Smith and
Georgia M. Smith

The South one half (S½) of the North one half (N½) of the Northeast one quarter (NE¼) of the Southeast one quarter (SE¼) of Section 13, Township 9 North, Range 22 East of the San Bernardino Base and Meridian, San Bernardino County, California. Located now in Mohave County, Arizona, recorded in Book 251 of Deeds, page 357, Mohave County Recorders office at Kingman, Arizona. Identified as Henry L. Smith and Georgia M. Smith, as joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 11

Irma A. Smith and
Genevieve Smith

The South one half (S½) of the North one-half (N ½) of the Northeast one-quarter (NE¼) of the Southeast one-quarter (SE¼) of Section 13, Township 9 North, Range 22 East of the San Bernardino Base and Meridian, San Bernardino County, California. Located now in Mohave County, Arizona recorded in Book 251 of Deeds, page 357 in Mohave County Recorders office at Kingman, Arizona. Identified as the Irma A. Smith and Genevieve Smith Parcel.

Arizona Title and Trust Company of Mohave.

Exhibit 12

Ruth F. McClure

That part of Government Lot 3, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 3297.72 feet, from the Northwest corner of Section 18, Township 9 North, Range 23 East, thence East, a distance of 1332.74 feet; thence North 12°45′ West, a distance of 338.34 feet; West a distance of 1255.84 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 330.00 feet to the point of beginning, more particularly described on that certain Survey filed September 12, 1966 at Fee No. 13297, Mohave County identified as the Ruth F. McClure Parcel. Located now in Mohave County, Arizona, recorded in Book 267 of Deeds, page 453 in Mohave County Recorders Office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 13

Walter G. Briggs and
Virginia B. Briggs

That part of Government Lot 3, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at the Southwest corner of Government Lot 3, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, now in Mohave County, Arizona, thence North 00°23′15″ East 330.00 feet to the Northwest corner of that certain parcel deeded to David R. Kerns and Lois L. Kerns and recorded in Book 5934, page 79, Official Records San Bernardino County on June 1, 1963. Thence East 132′ along North line of said Kerns property; thence South 330.00′ to South line; thence West 132′ to the beginning of this description. Containing one acre, more or less, recorded in the Book of Deeds No. 228, pages 409, 410 of the Records of Mohave County, Arizona, October 28, 1966. Identified as the Walter G. Briggs and Virginia B. Briggs, husband and wife Parcel.

Exhibit 14

John D. Vanderslice and
Nancy C. Vanderslice

Government Lot No. 2, Section 19, Township 9 North, Range 23 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to Government Survey. Located now in Mohave County, Arizona, recorded in Book 240 of Deeds, page 294 in Mohave County Recorders office in Kingman, Arizona. Identified as the John D. Vanderslice and Nancy C. Vanderslice, joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 15

George W. Harrison and
Charlotte Harrison

North half (N½) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, San Bernardino County, California. Located in Mohave County, Arizona, recorded in Book 222 of Deeds, page 43 in Mohave County Recorders Office at Kingman, Arizona. Identified as George W. Harrison and Charlotte Harrison, his wife.

Arizona Title and Trust Company of Mohave.

Exhibit 16

Donald W. Burson and
Hermoine Fae Burson

All of the North ½ (N½) of the South ½ (S½) of the Southwest ¼ (SW¼) of the North of the Northeast quarter (NE¼) of Section 13, of Township 9 North, Range 22 East, San Bernardino Base and Meridian, San Bernardino County, California. Located in Mohave County, Arizona recorded in Book 240 of Deeds, page 390 in the Mohave County Recorders Office at Kingman, Arizona. Identified as the Donald W. Burson and Hermoine Fae, his wife, as joint tenants.

Exhibit 17

Erma Anne Martin Clark

The South half (S½) of the North half (N½) of the Northwest quarter (NW½) of the Southeast quarter (SE¼) of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, accord-

ing to Government Survey. Located in Mohave County, Arizona, recorded in Book 221 of Deeds, page 467 in the Mohave County Recorders Office at Kingman, Arizona. Identified as Erma Anne Martin Clark, wife of Earl Harry Clark, Jr. dealing with her sole and separate property.

Arizona Title and Trust Company of Mohave.

Exhibit 18

Lawrence A. Andrews and Helen Andrews

The South half (S½) of the South half (S½) of the South half (S½) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Government Survey. Located in Mohave County, Arizona, recorded in Book 238 of Deeds, page 415 in the Mohave County Recorders Office at Kingman, Arizona. Identified as Lawrence A. Andrews and Helen Andrews, his wife, as joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 19

William B. Tittle

The North 82½ feet of the South half (S½) of the North half (N½) of the North half (N½) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, in the County of San Bernardino State of California, according to Government Survey, and;

The North 7½ feet of the South 82½ feet of the South half (S½) of the North half (N½) of the North half

(N½) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Government Survey, lying West of the West Bank of the Colorado River. Located in Mohave County, Arizona recorded in Book 233 of Deeds, page 55 in Mohave County Recorders Office at Kingman, Arizona. Identified as William B. Tittle, an unmarried man.

Arizona Title and Trust Company of Mohave.

Exhibit 20

Robert E. Sinnett and
Theresa Sinnett

That part of Government Lot 1, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point of the West line of said Section 18, South 989.15 feet, from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence East a distance of 1044.18 feet thence North 1°15′ East, a distance of 47.59 feet; thence North 18°00′ West a distance of 123.31 feet; thence West a distance of 1006.01 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 164.86 feet to the point of beginning, more particularly described on that certain Survey filed on September 12, 1966 at Fee No. 13297, Mohave County, identified as the Robert E. Sinnett and Theresa Sinnett Parcel. Located in Mohave County, Arizona, recorded at Deed 228, page 348, recorded in the Mohave County Recorders Office at Kingman, Arizona.

Exhibit 21

Lena Sullivan and
Michael M. Sullivan, Jr.

The Northeast quarter (NE¼) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range 22 East of the San Bernardino Base and Meridian in San Bernardino County, California; and the Southwest quarter (SW¼) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range 22 East of the San Bernardino Base and Meridian in San Bernardino County, California. Located in Mohave County, Arizona, recorded in Book 286 of Deeds, page 416, in the Mohave County Recorders Office at Kingman, Arizona. Identified, as Lena Sullivan, a married woman, and Michael M. Sullivan Jr.

Arizona Title and Trust Company of Mohave.

Exhibit 22

Lena Sullivan and
Theresa C. Sullivan Smith

The Northeast quarter (SW¼) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range 22 East of the San Bernardino Base and Meridian in San Bernardino County, California; and the Southwest quarter (SW¼) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range 22 East of the San Bernardino Base and Meridian in San Bernardino County, California. Located in Mohave County, Arizona, recorded in Book 286 of Deeds, page 416, in the Mohave County Recorders Office at Kingman, Arizona. Identified as Lena Sullivan and Theresa C. Sullivan Smith.

Arizona Title and Trust Company of Mohave.

Exhibit 23

Guy B. Fountain and
Thelma R. Fountain

All of the Easterly 990 feet of the Southeast quarter (SE¼) of the Southeast quarter (SE¼) of Section 13, Township 9 North, Range 22 East, of the San Bernardino Base and Meridian in San Bernardino County, State of California. Located in Mohave County, Arizona, recorded in Book 219 of Deeds, page 190 in the Mohave County Recorders Office at Kingman, Arizona. Identified as Guy B. Fountain and Thelma R. Fountain, his wife, as joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 24

David R. Kerns and
Lois L. Kerns

That part of Government Lot 3, Section 18, Township 9 North, Range 23 East, of the San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point of the West line of said Section 18, South 3956.58 feet, from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence East a distance of 132 feet to the point of beginning; thence continuing East a distance of 1336.88 feet, thence North 19°45′ West a distance of 124.61 feet, thence North 4°45′ West a distance of 213.44 feet; thence West a distance of 1274.87 feet; thence North 0°20′44″ West along the West line of said Section 18, a distance of 330.00 feet to the point of beginning, more particularly described on that certain survey filed on September 12, 1966 at Fee No. 13297, Mohave

County identified as the David R. Kerns and Lois L. Kerns Parcel. Located in Mohave County, Arizona recorded in Book 224 of Deeds, page 328 in the Mohave County Recorders Office at Kingman, Arizona.
Arizona Title and Trust Company of Mohave.

Exhibit 25

Jack T. Monroe and
Gloria A. Monroe

All that portion of the Northeast quarter (NE¼) of the Northeast quarter (NE¼) of Section 24, Township 9 North, Range 22 East, San Bernardino Base and Meridian, County of San Bernardino, State of California, according to Government Survey lying South and Easterly of a straight line running diagonally from the Northeast corner of said Northeast quarter (NE¼) of the Northeast quarter (NE¼) to the Southwest corner of the said Northeast quarter (NE¼) of the Northeast quarter of said Section 24, Township 9 North, Range 22 East, San Bernardino Base and Meridian, lying Easterly and Northerly of the present line of the middle of the Colorado River. Located now in Mohave County, Arizona, recorded in Book 250 of Deeds, page 394 in the Office of the Mohave County Recorders Office at Kingman, Arizona. Identified as Jack T. Monroe and Gloria A. Monroe, his wife, as joint tenants.
Arizona Title and Trust Company of Mohave.

Exhibit 26

Grant A. Lewis

That part of Government Lot 1, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 824.29 feet, from the Northwest corner of Section 18, T 9 North, R 23 East; thence East, a distance of 1006.01 feet; thence N 18°00′ West, a distance of 173.34 feet, thence West a distance of 951.34 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 164.86 feet to the point of beginning, more particularly described on that certain survey filed on September 12, 1966 at Fee No. 13297 Mohave County, Arizona, recorded in Book of records in the Mohave County Recorders Office at Kingman, Arizona. Identified as the Grant A. Lewis Parcel.

Arizona Title and Trust Company of Mohave.

Exhibit 27

Kenneth R. Lucas,
Kenneth C. Wetmore and
Marguerite L. Wetmore

That part of Government Lot 1, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 1318.86 feet from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence East a distance of 1039.22 feet; thence North 1°15″ East, a distance of 329.79 feet; thence West a distance of 1044.18 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 329.71 feet to the point of beginning, more particularly described on that certain survey filed on September 12, 1966 at Fee No. 13297, Mohave County identified as the Kenneth R. Lucas, Kenneth C. Wetmore, and Mar-

guerite L. Wetmore Parcel. Located in Mohave County, Arizona recorded in Book 221 of Deeds, page 243 in the Mohave County Recorders Office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 28

William Claypool, III and
his wife, Juanita Inez

The North half of the North half of the North half of the Northwest quarter of the Southeast quarter of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, according to Government Survey. Located in Mohave County, Arizona recorded in Book 300 of Deeds, page 402 in the office of the Mohave County Recorder at Kingman, Arizona. Identified as the William Claypool III, and his wife, Juanita Inez, as joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 29

Thomas G. Harward and
Doris J. Bowser

The North half of the North half of the North half of the Northwest quarter of the Southeast quarter of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, according to Government Survey. Located in Mohave County, Arizona, recorded in Book 300 of Deeds, page 420 in the Mohave County Recorders Office at Kingman, Arizona. Identified as the Thomas G. Harward, and Doris J. Bowser, his wife, as joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 30

Donald S. Johnson and
Shirley Joan Johnson

The North half of the North half of the North half of the Northwest quarter of the Southeast quarter of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, according to Government Survey. Located now in Mohave County, Arizona, recorded in Book 300 of Deeds, page 400 in the Mohave County Recorders Office at Kingman, Arizona. Identified as Donald S. Johnson and Shirley Joan Johnson, husband and wife, as joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 31

Jack M. Hunter

The North half of the North half of the North half of the Northwest quarter of the Southeast quarter of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian, according to Government Survey. Located now in Mohave County, Arizona recorded in Book 300 of Deeds, page 402 in the Mohave County Recorders Office at Kingman, Arizona. Identified as Jack M. Hunter.

Arizona Title and Trust Company of Mohave.

Exhibit 32

Bess W. Brewer, a widow

The Southeast quarter (SE¼) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian in the County of San Bernardino, State of California.

The Northwest quarter (NW¼) of the Southeast quarter of the Northeast quarter (NE¼) of Section 13, Township 9 North, Range 22 East, San Bernardino Base and Meridian in the County of San Bernardino, State of California. Located now in Mohave County, Arizona recorded in Book 219 of Deeds, page 192 in the Mohave County Recorders Office at Kingman, Arizona. Identified as Bess W. Brewer, a widow.

Arizona Title and Trust Company of Mohave.

Exhibit 33

Robert Chesney, Jr.

That part of Government Lot 2, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 1648.86 feet, from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence East a distance of 1034.25 feet; thence North 1°15′ East, a distance of 330.07 feet west, a distance of 1039.22 feet; thence South 0°20′44″ West along the West line of said Section 18, a distance of 330.00 feet to the point of beginning, more particularly described on that certain survey filed on September 12, 1966 at Fee No. 13297 Mohave County, identified as the Robert Chesney, Jr. Parcel. Located in Mohave County, Arizona, recorded in Book ....., of Deeds, page .... in the Mohave County Recorders Office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 34

Joe and Margaret A. McIntyre

That part of Government Lot 2, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18, South 2967.72 feet, from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence East, a distance of 660.00 to the true point of beginning continuing Easterly a distance of 594.84 feet; thence North 12°45′ West a distance of 338.34 feet; thence West a distance of 518.93 feet; thence South, a distance of 330.00 feet to the true point of beginning, more particularly described on that certain survey filed on September 12, 1966 at Fee No. 13297 Mohave County identified as the Joe and Margaret A. McIntyre Parcel. Located now in Mohave County, Arizona, recorded n Book 224 of Deeds, page 320 in the Mohave County Recorders office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 35

James N. and Marie C. McIntyre

That part of Government Lot 2, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, San Bernardino County, California, more particularly described as follows:

Beginning at a point on the West line of said Section 18 South 2967.72 feet, from the Northwest corner of Section 18, Township 9 North, Range 23 East; thence

East a distance od 660.00 feet; thence North a distance of 330.00 feet; thence West a distance of 660.00 feet; thence S°20′44″ West along the West line of said Section 18, a distance of 330.00 feet to the point of beginning; more particularly described on that certain survey filed on September 12, 1966 at Fee No. 13297, Mohave County identified as the James N. and Marie C. McIntyre Parcel. Located now in Mohave County, Arizona, recorded in Book 219 of Deeds, pages 180-181 in the Mohave County Recorders Office at Kingman, Arizona.

Arizona Title and Trust Company of Mohave.

Exhibit 36

Donald G. Beck and Helen K. Beck

The South half (S½) of the North half (N½) of the North half (N½) of the Northwest quarter (NW ¼) of Section 13, Township 9 North, Range 22 East, of the San Bernardino Base and Meridian, San Bernardino County, California. Located in Mohave County, Arizona, recorded in Book 281 of Deeds, page 298 in the Mohave County Recorders Office at Kingman, Arizona. Identified as Donald G. Beck and Helen K. Beck, husband and wife, as joint tenants.

Arizona Title and Trust Company of Mohave.

Exhibit 37

Property owned by Alan L. Boyle and
Dorothy M. Boyle, Husband and Wife:

Situated in the County of Mohave, State of Arizona:

All that portion of the Northwest ½ of the Northeast ¼, of the Northeast ¼ of Section 24, Township 9 North, Range 22 East, S.B.M. in the County of Mo-

have, State of Arizona, (formerly in San Bernardino County, State of California) being more particularly described as follows:

Beginning at the Northeast corner of said Section 24; thence S 44°16'45" W, along a diagonal line drawn from the Southwest corner of said Northeast ¼ of the Northeast ¼ of the said Section 24, to the Northeast corner of said Section 24, to the centerline of the Colorado River; thence Northwesterly along said centerline to the intersection of said centerline with a line that is parallel with and distant 50.00 feet Northwesterly of measured at right angles to said diagonal line; thence N 44°16'45" E, along said parallel line to the intersection of said parallel line with the centerline of the Dike Road; thence N 37°25'57" W, along said centerline 122.14 feet to a point on the Northerly line of said Section 24; thence N 89°55'00", along said Northerly line 239.00 feet to the point of beginning.

Exhibit 38

Property owned by Mike H. Puentes and Hazel M. Puentes, Husband and Wife

All that real property situated in the County of Mohave, State of Arizona, described as follows:

1 acre out of Government Lot 3, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian,

Beginning at the Southwest corner of Government Lot 3, Section 18, Township 9 North, Range 23 East, San Bernardino Base and Meridian, Thence North 0°23'15" East 330.00 feet to the Northwest corner of that certain parcel deeded to David R. Kerns and Lois L. Kerns and recorded in Book 5340, pages 883

and 884 Official Records, San Bernardino County deed records on June 19, 1963. Thence East 132.00 feet along the North line of said Kerns property to the true point of beginning.

Thence continuing East 132.00 feet along said Kerns property line to the Northeast corner of this description; thence South 0°23′15″ West 330.00 feet to the Southeast corner of this description; thence west 132.00 feet along the South line of the said Kerns property to the Southwest corner of this description; thence North 0°23′ 15″ East 330.00 feet to the true point of beginning of this description, same being the Northwest corner of this description. Containing 1 acre more or less.

Exhibit 39

Property Owned by Georgia Lynn Farmer, Gertrue N. Scott and Ethel Farmer

Situated in the County of Mohave, State of Arizona, described as follows:

The South ½ of the South ½ of the Northwest ¼ of the Southeast ¼ of Section 23, Township 9 North, Range 22 East, San Bernardino Base and Meridian, in the County of San Bernardino, State of California, according to Government Survey.

Excepting therefrom the South 300 feet of the West 776 feet thereof.

Exhibit 40

Property owned by Louis Mattis and Minnie Mattis, Husband and Wife

Situated in the County of Mohave, State of Arizona:

The South one-half (S ½) of the Northeast one-quarter (NE ¼) of the Southeast one-quarter (SE ¼) of Section Thirteen (13), Township 9 North, Range 22 East.

Exhibit 41

Description of Lands Awarded to Plaintiff Pursuant to Decision and Judgment

Fee Lands

Gov't. Lots 1, 2 and 3, Section 9, Township 17 North, Range 22 West, G. & S.R.M., Mohave County, Arizona.

Interlands

All that portion of the following described lands lying East of the Meander Line along the West Bank of the Colorado as surveyed in 1883 by the General Land Office in connection with the survey of Government Lands in Township 9 North, Range 22 East and Township 9 North, Range 23 East, S.B.M., San Bernardino County, California:

Commencing at the corner common to Sections 3, 4, 9, and 10 of Township 17 North, Range 22 West, G. & S.R.M., Mohave County, Arizona; Thence West a distance of 24.21 chains (1597.86 feet) to a witness point, said witness point being the True Point of Beginning and the Meander Corner common to Section 4 and Section 9 of said Township 17 North, Range 22 West, at the time of the 1905 Government Survey; Thence S 56°05′ W, a distance of approximately 70.31 chaines (4640.46 feet) to the mean high water line along the East edge of the Colorado River; Thence Southeasterly along said mean high water line to a point which bears S 51° 44′ W, a distance of approximately 62561 chains (4132.26 feet) from the Meander Corner common to Section 9 and Section 10 of said Township 17 North, Range 22 West at the time of the 1905 Government Survey; Thence N 51° 44′ E, a distance of approximate-

ly 62.61 chains (4132.26 feet) to a witness point, said witness point being identical to the heretofore described Meander Corner common to Section 9 and Section 10; Thence Northwesterly along the mean high water line of the East edge of the Colorado River, as it existed at the time of the 1905 Government Survey, to the True Point of Beginning.

(Title of Court and Cause)

MINUTE ORDER

The Findings of Fact, Conclusions of Law and Judgment, which was lodged with this court on February 4, 1972, signed by the Court on March 14, 1972, is filed as of this date.

Mary Jane Wienke,
Clerk of Court

(Copy of all counsel and parties in propria persona.)
(Filed 3/16/72)

APPENDIX C.

Order.

In the Court of Appeals, State of Arizona, Division One.

River Farms, Inc., a corporation, Appellant, v. Guy B. Fountain, et al., Appellees. 1 CA-CIV 2009, Department A.

Appellant's motion for rehearing and the appellees' response thereto have been considered by Judges Donofrio, Ogg and Stevens.

IT IS ORDERED denying the motion for rehearing.

DATED this 14th day of June, 1974.

/s/ Francis J. Donofrio
FRANCIS J. DONOFRIO
Presiding Judge
Department A

A true copy of the foregoing order was mailed this 14th day of June, 1974, to:

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Phoenix, Arizona 85003
Attorneys for Appellant
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Leek Oehler & Martin
P.O. Box 687
Bullhead City, Arizona 86430
Attorneys for Appellees

/s/ Classie Gantt
CLASSIE GANTT, Clerk

APPENDIX D.

Supreme Court, State of Arizona, Phoenix, 85007, July 10, 1974.

River Farms, Inc., a corporation, Appellant, v. Guy B. Fountain, et al., Appellees. Supreme Court No. 11614-PR; Court of Appeals No. 1 CA-CIV 2009; Mohave County No. C-6572.

The following action was taken by the Supreme Court of the State of Arizona on July 9, 1974 in regard to the above-entitled cause:

"ORDERED: Petition for Review—DENIED."

Record returned to Court of Appeals, Division One this 10th day of July 1974.

CLIFFORD H. WARD, Clerk
By /s/ Mary Ann Hopkins
Deputy Clerk

To: Rouland W. Hill, Esq., Shimmel, Hill, Bishop & Gruender, P.C. 111 West Monroe, Tenth Floor, Phoenix 85003; Donald D. Paul, Esq., Woolway, Paul & Magnus, 607 South Hobart Boulevard, Los Angeles, California 90005; John P. Frank, Esq., Lewis & Roca, 100 West Washington, 23rd Floor, Phoenix 85003; Terrence S. Leek, Esq., Leek, Oehler & Martin, P.O. Box 687, Bullhead City 86430; Clerk, Court of Appeals, Div. One, 309 State Capitol, Phoenix 85007; Honorable Kenneth C. Chatwin, 101 West Jefferson, Phoenix 85003; West Publishing Company, 50 Kellogg Blvd., St. Paul, Mn. 55102.

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974
No. 74-383

RIVER FARMS, INC., a corporation,
Petitioner,

v.

GUY B. FOUNTAIN, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Arizona

BRIEF FOR RESPONDENTS IN OPPOSITION

LEWIS AND ROCA
By John P. Frank
100 West Washington Street
Phoenix, Arizona 85003

LEEK, OEHLER & MARTIN
By Terrence S. Leek
P. O. Box 687
Bullhead City, Arizona 86430
Counsel for Respondents

IN THE

Supreme Court of the United States

October Term, 1974

No. _____

RIVER FARMS, INC., a corporation,

Petitioner,

v.

GUY B. FOUNTAIN, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Arizona

BRIEF FOR RESPONDENTS IN OPPOSITION

IN THE

Supreme Court of the United States

October Term, 1974

No. _____

RIVER FARMS, INC., a corporation,
Petitioner,

v.

GUY B. FOUNTAIN, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Arizona

BRIEF FOR RESPONDENTS IN OPPOSITION

JURISDICTION

This is a response to petition for certiorari to the Supreme Court of Arizona. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATEMENT OF THE CASE

This case involves land lying along the Colorado River at the point of the border between Arizona and California. The plaintiff is an Arizona corporation claiming the land of some fifty California families, and the basis of the claim as made was accretion. The defense was (1) non-accretion; and

(2) adverse possession.

The state courts found that under the Arizona adverse possession law, A.R.S. § 12-525, there had been adverse possession for a five-year period. Hence it found it unnecessary to decide whether, prior to that time, there had been movement of the River by accretion.

Incidental to the determination of the meaning of the Arizona statute are certain subsidiary questions. The statute depends, in addition to actual physical possession, upon the payment of taxes and claims under deeds duly recorded. There is a problem as to whether the payment of taxes or of the making of recordings in either state would serve the purposes of this statute. The position of petitioner is that only payment and recording in the "right" state would serve the purpose, and that to determine which is the "right" state, it was necessary to determine the accretion issues.

The Arizona courts, in the light of the Arizona-California Interstate Boundary Compact, A.R.S. § 41-522, *et seq.*, saw fit to interpret the Arizona statute to make recordings and taxes paid in California sufficient for purposes of the Arizona law.

This petition followed.

REASONS FOR DENYING THE WRIT

Only in a shirttail sense is there any federal question in this case at all. The fundamental question is the interpretation of the Arizona law.

But let us not make the matter too easy. It is true that the Arizona court looked to the Compact for general principles of guidance in reaching its conclusions as to the meaning of the Arizona law. To that limited extent there is a federal

question in the case. However, there is no serious showing of a conflict with any other decision relating to these terribly specialized points, nor is there any suggestion of any particular importance to the question. We are dealing with a highly practical matter of land title, and one heavily dependent upon its facts. No one can very seriously quarrel with the proposition of the Arizona court that, "we merely state that great liberality should be allowed in filing of titles which have been clouded by the shifting of the Colorado River over the years." On the tax point, the matter is one of state law only: "We feel that the paying of taxes in California substantially complies with the requirement of A.R.S. § 12-525."

CONCLUSION

It is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
LEWIS AND ROCA

By John P. Frank

LEEK, OEHLER & MARTIN

By Terrence S. Leek
Counsel for Respondents

October, 1974.